

FACT SHEET

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

May 2014

Lesbian, gay, bisexual, and transgender (LGBT) individuals and individuals living with HIV/AIDS have long faced barriers to obtaining necessary health care. LGBT individuals have higher rates of uninsurance than their heterosexual counterparts, experience worse health outcomes, and often face discrimination in health care settings.¹ Additionally, LGBT individuals are at a higher risk for mental illness, cancer, and other diseases.² 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 and people living with HIV/AIDS 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 needed health care outright.³
- 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.⁴ The numbers are especially high for transgender and gender-nonconforming individuals, with over 20% reporting that they were subjected to harsh or abusive language by a health care professional and were blamed for their health problems.⁵
- Some LGBT individuals also report being excessively questioned about their sexuality or unnecessarily examined by health care providers 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."⁶ A transgender patient reported seeking treatment for a sore throat, and being "forced to have a pelvic exam." According to the patient, "The doctor invited others to look at me while he examined me and talked to them about my genitals."⁷ Such unnecessary questioning and examination is discriminatory and harms patient care.

Refusals to provide health services to LGBT people and individuals living with HIV/AIDS endanger patients' lives and health and can have irreversible consequences.⁸

- In one case, a 39-year old teacher allegedly died after not getting appropriate medical care due to her sexual orientation.⁹ According to a lawsuit filed by her brother, the teacher's medical condition was not taken seriously by the EMTs who responded to her 911 call after they "became immediately aware" she was a lesbian. She was abandoned for over an hour after being admitted to the hospital – in violation of protocol – and while unattended, she fell into a coma.¹⁰ She died several days later.¹¹
- In another case, a 53-year old man in need of a kidney transplant was denied coverage by his insurance company because of his HIV-positive status, putting his life at risk.¹²
- 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.¹³ After the doctor refused to authorize emergency room treatment, the patient was brought to the ER by police and admitted to the hospital with internal bleeding; he was ultimately diagnosed with an infection, pneumonia, and AIDS.¹⁴
- A transgender woman was refused her prescription hormone medication while at state juvenile detention facilities. This denial led to "severe health consequences and emotional distress" due to withdrawal symptoms.¹⁵
- A patient with HIV who was admitted to a hospital reported that after he disclosed that he had sex with men, the hospital staff ignored him, refused to allow his family to visit, and did not honor his requests for his HIV medication.¹⁶ The doctor at the hospital told the patient's personal doctor, "This is what he gets for going against God's will" and "You must be gay, too, if you're his doctor."¹⁷ Despite explaining to the nurses the importance of taking his HIV medication, the patient missed five doses.¹⁸ Because some HIV medications are highly time-sensitive, a missed or delayed dose can make the medicine less effective or even completely ineffective.

Refusals to provide health care to LGBT people and those living with HIV/AIDS can further traumatize patients who are already in physical and emotional distress.

- According to one transgender woman, a hospital refused to allow her doctor to perform breast-augmentation surgery at its facilities.¹⁹ The outpatient surgery manager reportedly told the patient that the facilities could not be used for her surgery because "God made you a man."²⁰ The patient stated that this caused her to feel "shock, embarrassment, intimidation, physical distress and injury, humiliation, fear, [and] stress. . . ." ²¹
- After two years of treatment for severe back pain, an orthopedic surgeon recommended spinal fusion surgery to his patient. Yet upon learning one week prior to surgery that the patient was HIV-positive, the surgeon canceled surgery and refused to perform it.²² It took several months for the patient to find another surgeon and schedule the surgery. During that time, the patient suffered from severe physical pain and emotional distress.²³
- A transgender man reported "living with excruciating pain in my ovaries because I can't find a doctor who will examine my reproductive organs."²⁴
- Because of her objections to same-sex relationships, a counseling student refused to provide any counseling about relationship issues to a gay client suffering from depression.²⁵

Refusals to provide health care to LGBT people and those living with HIV/AIDS add expenses and burdens to health care for those who can least afford it.

- LGBT and HIV-positive individuals in rural areas or who have inflexible jobs or low-incomes are especially harmed by refusals. The additional time and expense of finding an alternative provider after a refusal falls most heavily on them.²⁶ One provider who compassionately treats LGBT individuals reported that some of his patients travel more than 500 miles to receive routine care from him.²⁷
- As those who are LGBT or living with HIV/AIDS age, they encounter discrimination and refusals in the long-term care setting.²⁸ 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.²⁹ In one case, six nursing homes refused to care for an HIV-positive man. The man's family was forced to place him in a facility 80 miles away from their home.³⁰
- An infertility practice group accepted Guadalupe Benitez as a patient, and subjected her to a year of invasive tests and treatments.³¹ When it became clear that she needed in vitro fertilization to become pregnant, every doctor in the practice refused, claiming that their religious beliefs prevented them from performing the procedure for a lesbian. This clinic was the only one covered by her health insurance plan, so Ms. Benitez had to pay for treatment at another clinic, despite having insurance coverage for infertility treatment.

Fear of discrimination prevents LGBT people 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 discourage people from disclosing personal information that can be essential to their care or lead patients to avoid the health care system entirely or to delay necessary care.³² Indeed, those most in need of services frequently report mistreatment by providers.³³

- According to one transgender patient, "Finding doctors that will treat, will prescribe, and will even look at you like a human being rather than a thing has been problematic. [I have] been denied care by doctors and major hospitals so much that I now use only urgent care physician assistants, and I never reveal my gender history."³⁴
- Nearly 30% of transgender individuals reported postponing or avoiding medical care when they were sick or injured, due to discrimination and disrespect, and over 30% delayed or did not try to get preventive care.³⁵
- Over 1 in 5 LGBT individuals reported withholding information about their sexual practices from their doctor or another health care professional.³⁶
- A main barrier to getting appropriately screened for breast cancer among lesbian women is poor communication with their health care providers, which one study found was due to fear of discrimination based on sexual orientation.³⁷

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,³⁸ 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.³⁹
- Hospitals that receive federal money are prohibited from restricting or denying patient visitation based on sexual orientation or gender identity.⁴⁰
- 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.⁴¹

Simply put, a health care worker should no more refuse to treat people because they are lesbian, gay, bisexual, transgender, gender non-conforming, or living with HIV/AIDS than because of their race or religion.

HEALTH CARE REFUSALS HARM PATIENTS: THE THREAT TO LGBT PEOPLE AND INDIVIDUALS LIVING WITH HIV/AIDS
• FACT SHEET

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- 7 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 74 (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf (internal quotations omitted).
- 8 Further discussion of some of the points and cases in this factsheet can be found in Brief for Nat'l Ctr. for Lesbian Rights et. al. as Amici Curiae Supporting Defendants-Appellants and Intervenor-Appellants, *Stormans, Inc. v. Selecky* (Nos. 12-35221, 21-35223), 2012 WL 3911751 (9th Cir. Sept. 7, 2012).
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- 10 *Beckett v. Maine Medical Center*, No. CIV.98-93-P-C, 1999 WL 1995210, at *1 (quoting Amended Com.plaint ¶ 25), *2, *3-4 n.3 (D. Me. Jan. 25, 1999); Vegh, *supra* note 9.
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- 12 Summary, *In re John Carl*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/in-re-john-carl> (last visited Sept. 10, 2013); Press Release, Lambda Legal, Lambda Legal Appeals HMO Decision To Deny a Kidney Transplant To a Colorado Man Because He Has HIV (Sept. 22, 2003), available at http://www.lambdalegal.org/news/co_20030922_lambda-appeals-hmo-decision-to-deny-kidney-transplant.
- 13 *Woolfolk v. Duncan*, 872 F. Supp. 1381, 1387, 1390 (E.D. Pa. 1995) (internal quotations omitted).
- 14 *Id.* at 1386-1387.
- 15 Summary, *Rodriguez v. Johnson et al.*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/rodriguez-v-johnson-et-al> (last visited Sept. 10, 2013).
- 16 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>.
- 17 Complaint, *Simoes*, No. UNNL-1868-12, at 5 (internal quotations omitted).
- 18 *Id.* at 4-5.
- 19 Complaint, *Hastings v. Seton Med. Ctr.*, No. CGC-07-470336 (Cal. Sf. Super. Ct. Dec. 19, 2007) (case settled).
- 20 *Id.* at 4 (internal quotations omitted).
- 21 *Id.* at 5.
- 22 Complaint, *Spera v. Orthopaedic Associates of Milwaukee*, Case Code 30107 (Wi. Cir. Ct. Milwaukee County October 5, 2004) (case settled), available at http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/spera_wi_20041005_complaint-wi-circuit-court.pdf. See also Summary: *In re Spera*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/in-re-spera> (last visited Sept. 9, 2013).
- 23 Complaint, *Spera*, Case Code 30107, at 5-6.
- 24 Grant et. al., *supra* note 7, at 77.
- 25 *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 with prej.* by *Ward v. Wilbanks*, 09-CV-11237 (E.D. Mich. Dec. 12, 2012) (case settled).
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- 28 See SERVICES AND ADVOCACY FOR GAY, LESBIAN, BISEXUAL & TRANSGENDER ELDERLY & MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT ELDERLY iv-v (Mar. 2010), available at <https://www.lgbtagingcenter.org/resources/pdfs/ImprovingtheLivesofLGBTOlderAdultsLargePrint.pdf> (stating that LGBT elders may face hostile environments, staff, or other patients in nursing homes and assisted living facilities and refusals to include families of choice in medical decision-making).
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- 31 N. Coast Women's Care Med. Group, Inc. v. San Diego County Superior Court, 189 P.3d 959 (Cal. 2008).
- 32 See, e.g., Grant et al., *supra* note 7, at 76.
- 33 See *id.* at 74.
- 34 *Id.* at 75.
- 35 *Id.* at 76.
- 36 Moyer, *supra* note 27 (referencing a 2004 survey by Witeck-Combs Communications/Harris Interactive).
- 37 Jessica P. Brown and J. Kathleen Tracy, *Lesbians and Cancer: An Overlooked Health Disparity*, 19 CANCER CAUSES CONTROL 1009, 1017 (2008).
- 38 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).
- 39 45 C.F.R. §§ 155.120(c)(2), 156.200(e) (2012).
- 40 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).
- 41 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>.