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OBSTACLES AND OPPORTUNITIES: ENSURING HEALTH AND WELLNESS FOR LGBT FAMILIES



Authors



In Partnership With



In "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," The Movement Advancement Project (www.lgbtmap.org), the Family Equality Council (www.familyequality.org), and the Center for American Progress (www.americanprogress.org) co-authored one of the most comprehensive portraits to date of the wide range of obstacles facing LGBT families in America. In this companion issue brief, the co-authors have partnered with the National Coalition for LGBT Health (www.lgbthealth.net) to highlight policy changes designed to improve the health, wellness, and lives of LGBT families.

INTRODUCTION

The American public has a vested interest in ensuring that all children have access to the basic resources they need to thrive, including quality health care and supportive health care providers. Unfortunately, inequitable laws and social stigma act against the health and well-being of the two million children being raised in lesbian, gay, bisexual, and transgender (LGBT) families, in four key areas:

- **Reduced access to health insurance.** Under federal law, most employers are not required to offer health benefits to the same-sex partners of LGBT workers, nor the

partner's children, even if the couple is legally married in their state. When coverage is offered, LGBT families must pay additional taxes. For transgender family members, insurance plans may contain exclusions that create obstacles to coverage for even the most basic care.

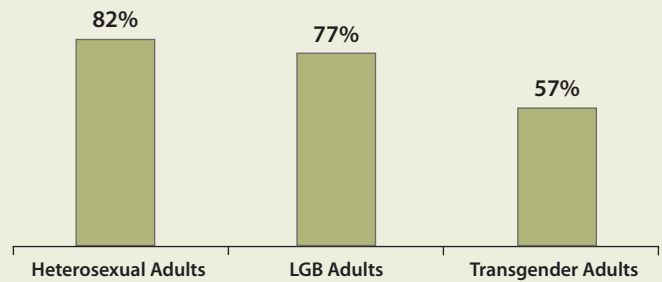
- **Restrictions on caregiving and medical decision-making.** Under federal and state laws, LGBT parents may be denied leave to take care of one another. Additionally, in most states, the non-biological parent is unable to establish a legal relationship to the child, meaning that parent may be unable to make medical decisions for their children.
- **Unwelcoming healthcare environments.** Health care environments are often inhospitable to LGBT families. Professional caregivers, including physicians, counselors and support staff, may be uninformed, hostile, discriminatory, or refuse to treat LGBT people and their families.
- **Increased health disparities.** Key disparities between LGBT adults and the general population can be seen not only in access to health insurance, but also in access to care, the incidence of HIV/AIDS, and chronic physical conditions such as diabetes, obesity and arthritis. LGBT families of color face double jeopardy due to already-existing race-based disparities.

REDUCED ACCESS TO HEALTH INSURANCE

LGBT Families Are Less Likely to Have Health Insurance

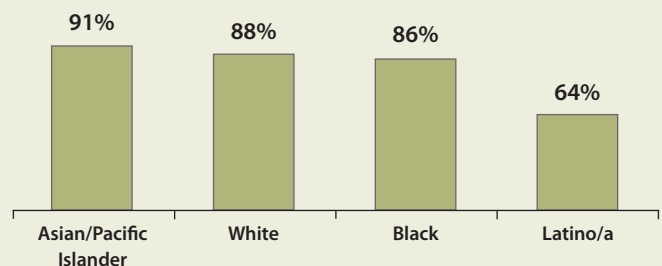
- Research shows that LGBT adults are less likely to have health insurance than their heterosexual counterparts.¹
- Approximately 82% of heterosexual adults have health insurance, compared to 77% of LGB adults and 57% of transgender adults.
- Even when a transgender family member has health insurance, plan language may exclude coverage for both routine care and transition-related care.
- This reduced access is especially pronounced among LGBT people of color.
- Researchers believe that children raised by LGBT parents are also less likely to have health insurance.²

Percent of Adults with Health Insurance



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009.

LGB Adults with Health Insurance by Race/Ethnicity

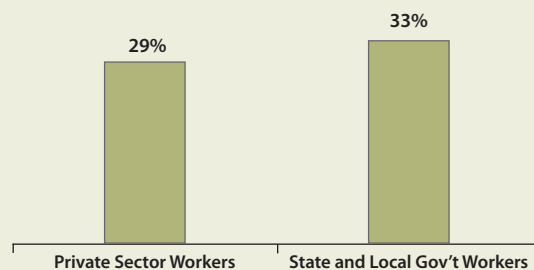


Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009.

Federal Law Restricts Access to Health Insurance for Same-Sex Partners and Spouses; State Laws Fail to Protect Their Children

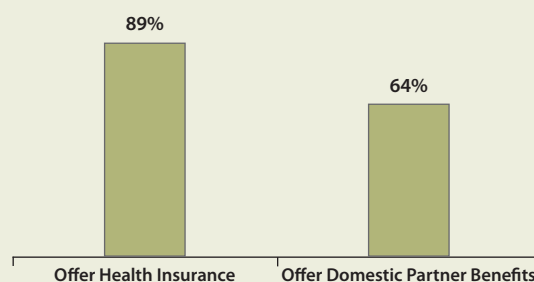
- The Defense of Marriage Act (DOMA) prevents the federal government from recognizing the marriages of same-sex couples.
- Because most employee benefits are regulated under the federal Employee Retirement Income Security Act (ERISA), which does not recognize same-sex couples because of DOMA, most employers are not mandated to extend health insurance benefits to the partners of LGBT employees, or to the children of these partners, if the employee does not have legal ties with the children.
- Because legal mechanisms to protect families like joint and second-parent adoption are not available in the majority of states, a lack of legal ties is common for LGBT families, which further decreases benefit availability for children in LGBT families.
- The average LGBT family could pay more than \$3,100 extra per year because the parents cannot enroll their family in an employer-sponsored health care plan. Families who cannot afford the extra cost may be forced to go without coverage.³

Availability of Domestic Partner Benefits for Same-Sex Couples, 2011 National Compensation Survey



Source: Bureau of Labor Statistics, "Table 8. Health Care Benefits: Access for unmarried domestic partners, National Compensation Survey, March 2011," July 26, 2011.

Large Companies Offering Health Insurance



Source: HRC, "Corporate Equality Index 2012."

Opportunities

- Repeal DOMA. Then, legalize marriage for gay and lesbian couples to strengthen legal ties for the entire family.
- Update ERISA to ensure that companies that elect to extend health benefits to employees' spouses and/or children are also required to extend benefits to employees' permanent partners and/or children for whom the employee acts as a parent/is a *de facto* parent. Likewise, require companies purchasing insurance through state exchanges to extend these domestic partner and family benefits if they extend benefits to heterosexual employees' spouses and children.
- Ensure that federal and state-level enabling regulations and legal clarifications for the Affordable Care Act define "family," "child," "spouse," and "parent" broadly to include LGBT families and *de facto* parents.
- Pass comprehensive parental recognition laws at the state level to fully protect children in LGBT families. Laws should allow joint and second-parent adoption, provide an automatic presumption of parentage for both mothers when lesbian couples having children through donor insemination, and provide legal recognition of *de facto* parents.

Federal Tax Law Makes Health Insurance More Expensive When Employers Do Elect to Offer These Benefits

- Even when employers choose to extend health insurance benefits to domestic partners, non-federally recognized spouses, and/or their children, LGBT families are taxed on the value of the benefit while married heterosexual families are not.
- Taxation of health benefits costs the average employee with domestic partner benefits \$1,069 more in taxes per year than a married heterosexual employee with the same coverage. In most states, families also have to pay state taxes on these benefits.⁴
- Employers are also required to pay federal taxes on the value of these benefits, and in states without comprehensive relationship recognition, may also pay state taxes.

Opportunities

- Pass the Tax Equity for Domestic Partner and Health Plan Beneficiaries Act/Tax Equity for Health Plan Beneficiaries Act (DP Tax) or similar legislation that provides for equal treatment related to the provision and taxation of health insurance benefits.
- States that mimic federal tax guidelines should eliminate their state's portion of this tax.

COBRA Puts Coverage in Jeopardy When LGBT Parents Lose or Change Jobs

- The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) enables heterosexual married employees to keep their existing job-related health insurance coverage for themselves and their families for 18 months after they have lost their jobs.
- Current law does not require that employers, even those who provide domestic partner benefits, give employees the opportunity to enroll same-sex partners and spouses in insurance provided through COBRA, nor to access funding Congress has authorized to help families pay for it.
- It is unclear about whether children without a legal relationship to the covered employee are considered dependent children for the purposes of continuing coverage.
- In certain situations, domestic partners and their children can only obtain COBRA coverage if the covered employee authorizes it, which can leave partners and children uncovered if a couple's relationship ends.

Opportunities

- Pass the Equal Access to COBRA Act, which would provide equal access to COBRA benefits by extending COBRA coverage to anyone who is covered under an employer's group health plan, including same-sex partners and spouses.
- Amend IRS regulations to make COBRA available to any person covered by an employee's health plan prior to the qualifying event.

FMLA Does Not Cover Leave for Care for Same-Sex Partners or Spouses

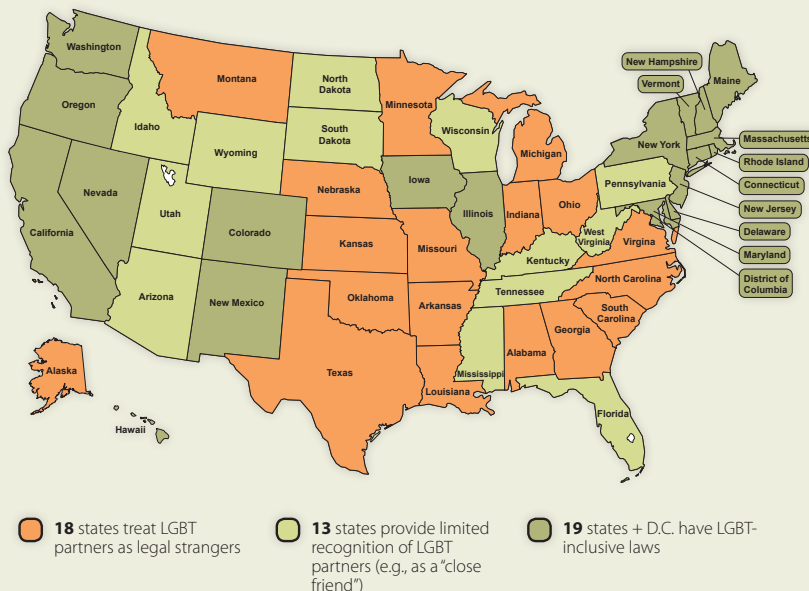
- The federal Family and Medical Leave Act (FMLA) does not require employers to grant leave to a worker to take care of a same-sex partner or spouse, although heterosexual workers have this right.
- Recent federal clarification for FMLA allows individuals who are actively parenting a child (standing *in loco parentis*) to access FMLA benefits.

Opportunities

- Expand the FMLA to include leave to care for a domestic partner or same-sex spouse. Even broader language, such as that found in the Family and Medical Leave Inclusion Act, could also help heterosexual domestic partners, single adults, widows and widowers—anyone who gives care to, or relies on care from, non-biological family members.
- States can also create laws that provide broader medical leave than the federal government. Those states with broader family leave laws that can serve as a model for others include: California, Connecticut, Hawaii, Massachusetts, New Jersey, New Mexico, Oregon, Rhode Island and Vermont, plus D.C.

RESTRICTIONS ON CAREGIVING AND MEDICAL DECISION-MAKING

- Depending on the state, unless an LGBT patient has specific and often expensive legal documents in place, his or her partner may be excluded from making medical decisions.
- When an LGBT parent lacks legal recognition as a parent, he or she may be denied visitation rights and the ability to make medical decisions for his or her child.



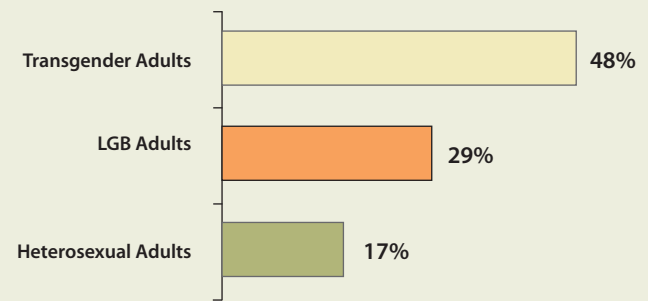
Opportunities

- Revise and expand state adoption laws, hospital visitation laws, and medical decision-making laws to be inclusive of today's families, including LGBT families and *de facto* parents. Laws that identify default visitors and decision-makers should include domestic partners, *de facto* parents, and other non-legally recognized family members such as "close friends."
- Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, advanced health care directives (AHDs) and related issues. Hospitals should have a specific, written policy that is broadly understood by staff to avoid conflict, liability or tragedy.

UNWELCOMING HEALTH CARE ENVIRONMENTS

- Many professional caregivers—from physicians to counselors to the receptionists at medical facilities—are not accepting of, or trained to work with, LGBT families. They can be discriminatory, hostile, or even refuse to serve LGBT families.
- This treatment contributes to health disparities. Data show that 29% of LGB adults and 48% of transgender adults delayed or never sought medical care for themselves, versus only 17% of heterosexual adults.
- Children are also affected by the hostility extended to their parents, and, as a result, may suffer inferior health outcomes. A pediatrician may, for example, ask hostile questions or spend less time with an LGBT family.

Percent of Adults Delaying or Avoiding Medical Care



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009; Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

Opportunities

- Governmental agencies focused on health should ensure that training programs address the needs of LGBT families. The federal Department of Health and Human Services should include LGBT-specific trainings and support as part of the cultural competency requirements of the Affordable Care Act.
- Programs receiving federal funding should also be required to incorporate LGBT cultural competency in their curricula, and include challenges facing transgender patients and partners.
- States should pass non-discrimination laws and provide recourse for LGBT families who experience discrimination in hospitals and other medical facilities.
- Accreditation groups like the Joint Commission and the American Medical Association should develop non-discrimination policies and standards for serving LGBT families that explicitly include family status, sexual orientation, and gender identity.
- Hospital administrators, physicians and staff should be made fully aware relevant laws and policies and what they can and cannot do to help LGBT families requiring medical treatment and emergency services.

Health and Wellness Terms



Health equity is the attainment of the highest level of health for all people. Achieving health equity requires valuing everyone equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and the elimination of health and health care disparities.

Health disparities are health differences closely linked with social, economic, and/or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater obstacles to health based on their racial or ethnic group; religion; socioeconomic status; gender; age; mental health; cognitive, sensory, or physical disability; sexual orientation or gender identity; geographic location; or other characteristics historically linked to discrimination or exclusion."

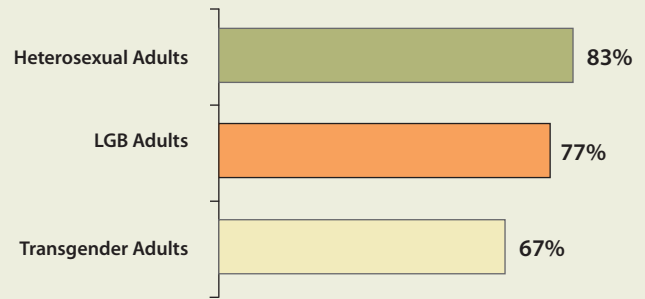
Our goal should be to achieve health equity, eliminate disparities, and improve the health of all groups.

Source: Healthy People 2020, www.healthypeople.gov

INCREASED HEALTH DISPARITIES

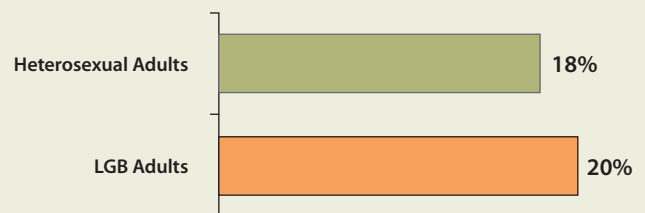
- Key disparities between LGBT adults and the general population are seen in the incidence of HIV/AIDS, and chronic physical conditions such as diabetes, obesity, and arthritis.⁵
- LGBT families of color face double disparities because people of color also have reduced access to healthcare, lower rates of routine care and prevention, and higher rates of debilitating diseases like obesity, cancer, diabetes, and HIV/AIDS.⁶
- Low-income LGBT families, LGBT families living in poverty, and LGBT families living in rural communities also face a “multiplier effect” that increases disparities for chronic conditions like cancer and diabetes.⁷
- LGBT adults report experiencing psychological distress, which researchers attribute to accumulated effects of stigma and discrimination.⁸
- While several studies provide information about the health status of the LGBT population, much is still not known about LGBT families due to a consistent lack of data collection.

Percent of Adults Reporting Excellent or Very Good Overall Health



Source: Massachusetts Department of Public Health, “The Health of Lesbian, Gay, Bisexual and Transgender Persons in Massachusetts,” 2009.

Percent of Adults Reporting Psychological Distress



Source: Jeff Krehely, “How to Close the LGBT Health Disparities Gap,” Center for American Progress, December 2009.

Opportunities

- Private and government-based research and data collection on LGBT family health disparities and needs should be expanded, including studies on both physical and mental health of LGBT families.
- All governmental public health surveys should include questions on sexual orientation and gender identity.
- States should investigate family health disparities related to sexual orientation and gender identity by including markers in their Behavioral Risk Factor Surveillance Systems.

REFERENCES AND NOTES

Unless otherwise noted, the references and full citations to the information in this brief can be found in the full report: Movement Advancement Project, Family Equality Council and Center for American Progress, “All Children Matter: How Legal and Social Inequalities Hurt LGBT Families,” October 2011.

¹ See Full Report, p. 80.

² See Full Report, p. 80.

³ See Full Report, p. 81.

⁴ See Full Report, pp. 81-82.

⁵ See Full Report, pp. 83-84.

⁶ See Full Report, pp. 83-84.

⁷ Agency for Healthcare Research and Quality, “National Healthcare Disparities Report,” 2010.

⁸ See Full Report, pp. 83-84.

ABOUT THIS BRIEF

This brief is based on content from *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families*, a report which provides one of the most comprehensive portraits to date of the wide range of obstacles facing LGBT families in America. It also offers detailed recommendations for eliminating or reducing inequities and improving the lives of children with LGBT parents. For more information, visit www.lgbtmap.org/lgbt-families, www.familyequality.org or www.americanprogress.org.



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