

LEGAL AND POLICY ISSUES FOR LGBT PATIENTS WITH CANCER OR AT ELEVATED RISK OF CANCER

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OBJECTIVE: *To understand the major legal and policy issues for lesbian, gay, bisexual and transgender (LGBT) cancer patients.*

DATA SOURCES: *LGBT health policy research.*

CONCLUSION: *Major policy issues include discrimination, lack of cultural competency and clinically appropriate care, insurance coverage, family recognition, and sexual orientation and gender identity data collection.*

IMPLICATIONS FOR NURSING PRACTICE: *Nurses play a major role in providing affirming and competent care to LGBT cancer patients. Using correct names and pronouns with transgender patients, and collecting sexual orientation and gender identity data can send an affirming message to LGBT patients, as well as inform decision support and preventive screenings, and improve treatment outcomes.*

KEY WORDS: *LGBT, sexual orientation, gender identity, cultural competency, family recognition, cancer registry, data.*

There are a number of legal, ethical, and policy issues affecting lesbian, gay, bisexual and transgender (LGBT) patients living with cancer or at elevated risk of cancer. Discrimination in society can affect peo-

ple's health outcomes, and discrimination in health care, coupled with a lack of culturally competent, LGBT-affirming providers, can cause many LGBT patients to avoid preventive, routine care.^{1,2} While many states and municipalities have nondiscrimination laws that explicitly ban discrimination on the basis of sexual orientation and gender identity (SOGI), most states and municipalities do not.³ A number of states have considered and passed laws that authorize service providers, including health care providers, to discriminate against LGBT people based on religious or moral beliefs. Along with anti-LGBT discrimination in health care, the lack of cultural competency to serve LGBT

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patients is a factor in lower rates of preventive cancer screenings among lesbians, bisexual women, and transgender individuals. Risk factors include higher rates of tobacco⁴ and substance use.⁵ A number of federal government agencies⁶ and non-governmental organizations⁷ have initiated cultural competency trainings in recent years to improve care for LGBT people. The Affordable Care Act (ACA) increased access for LGBT people, black and Latino Americans, and people living with HIV (PLWH), groups that were all less likely than the general population to have health insurance. As this special issue went to press, many of these policy changes were at risk by Republican-led attempts to “repeal and replace” the ACA. A number of federal policy changes, most importantly the legalization of same-sex marriage in all 50 states, have increased protections for same-sex spouses to visit their spouse in the hospital, take family leave to care for a spouse or other family member, and access income support programs that are important to older and disabled adults.⁸ Finally, the collection of SOGI data in cancer registries, on health surveys, and in clinical settings is essential to understand and address LGBT health disparities, and to ensure that LGBT people have access to health and social support systems on an equal basis. While much progress has been made in this area,⁹ under the Trump-Pence Administration the Administration for Community Living removed SOGI questions from the National Survey of Older Americans Act Participants and from a disability survey.¹⁰

ANTI-LGBT DISCRIMINATION, AND NONDISCRIMINATION LAWS AND POLICIES RELATED TO HEALTH

LGBT people experience discrimination in employment,¹¹ housing,¹² and public accommodations.² They also experience discrimination in health care,^{1,2,13} which takes the form of health care providers using harsh or abusive language, blaming patients for their health status, being physically rough or abusive, or refusing care outright.¹ Experiences of anti-LGBT discrimination and anticipation thereof, as well as concern about disclosure of one’s sexual orientation or gender identity, can contribute to minority stress among LGBT individuals.¹⁴ Experiences of discrimination in health care can cause individuals to

not seek routine, preventive care and emergency care.²

While 19 states have nondiscrimination laws that explicitly ban discrimination on the basis of SOGI (and 3 more ban just sexual orientation discrimination), 28 states do not have such laws.³ Worse, many states are considering and passing laws that authorize health care providers to discriminate against LGBT people based on religious or moral objection.¹⁵ In 2016, Mississippi and Tennessee passed laws that allow health care providers to refuse to serve LGBT people and same-sex couples based on religious or moral belief.^{15(pp. 4–5)} The First Amendment Protection Act, which would authorize anti-LGBT discrimination in the name of “free exercise” of religion, is expected to be introduced into Congress and has the support of the President, the Republican leadership in Congress, and the 2016 GOP Platform.¹⁶

Sometimes cancer treatment spaces are “gendered” in ways that unintentionally discriminate against transgender individuals. For example, a transgender man being treated for breast cancer was told to “wait outside,” because “only women are allowed in the waiting room.”¹⁷ A more culturally competent and compassionate policy would acknowledge that transgender people develop breast and other kinds of cancers, and should be allowed to wait in waiting rooms along with other patients.

In May 2016 the US Department of Health and Human Services (HHS) Office of Civil Rights published a final rule implementing Section 1557, the ACA’s primary nondiscrimination provision.¹⁸ The rule states that discrimination based on gender identity is prohibited in health facilities, programs, and activities receiving federal funding because it constitutes a form of sex discrimination banned by Title IX of the Education Amendments of 1972. While the rule does not explicitly include sexual orientation, it does state that discrimination based on sex stereotyping is prohibited, and that some forms of anti-gay/lesbian/bisexual discrimination may be classified as a form of sex stereotyping. While this rule had major potential to reduce discrimination in health care for transgender people and, to a lesser extent, gay, lesbian and bisexual people, it was enjoined nationwide by a federal district court judge on December 31, 2016. The order prohibited the HHS from enforcing the nondiscrimination rule’s gender identity component.¹⁹

In May 2017 the US Department of Justice requested that the federal courts “remand this matter to HHS and stay this litigation. . .” [seeking to over-

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