

Administration for Community Living  
Administration on Aging  
US Department of Health and Human Services  
Attention: Becky Kurtz,  
Washington, DC 20201

August 19, 2013

**RE: Department of Health and Human Services, Administration on Aging, 45 CFR Parts 1321 and 1327, RIN 0985-AA08, State Long-Term Care Ombudsman Program, Proposed Rule**

Submitted online via Regulations.gov

Dear Ms. Kurtz,

The undersigned organizations appreciate the opportunity to comment on the proposed rule to implement provisions of the Older Americans Act, State Long-Term Care Ombudsman program.

**Background: Unique Challenges to Successful Aging Faced by LGBT Older Adults**

Between 3.4% and 3.8% of U.S. adults self-identify as lesbian, gay, bisexual, or transgender (LGBT) – a population of approximately nine million.<sup>1</sup> Of these, approximately 700,000, or 0.3% of U.S. adults, self-identify as transgender. According to the 2010 United States Census, approximately 650,000 US households are headed by same-sex households, and same-sex couple households exist in 93% of all U.S. counties.<sup>2</sup> LGBT older adults face a variety of challenges as they strive to maintain their independence. Despite recent advances in LGBT rights, a growing body of research suggests that LGBT older adults still face very high levels of marginalization and discrimination, are disproportionately likely to live in poverty and be socially isolated, face unique health disparities, and remain underserved by a national aging network ill-prepared to engage them. Taken together, these challenges compel us to ensure that our diverse family structures are acknowledged and reflected in regulations, that data be collected so that patterns or practice of discrimination can be identified and addressed, and that ombudsmen can be trained to be more adept and attuned to recognizing and addressing issues specific to LGBT individuals who seek the assistance of LTC ombudsmen.

**Social Isolation:** Several studies document that LGBT elders access essential services – including visiting nurses, food stamps, senior centers, and meal plans – much less frequently than the general aging population.<sup>3,4,5,6</sup> These data are particularly troubling given that LGBT

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1 Gates, Gary & Newport, Frank, Special Report: 3.4% of U.S. Adults Identify as LGBT, Gallup (Oct. 18, 2012), available at: <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>; Gates, Gary J., How many people are lesbian, gay, bisexual, and transgender?, Williams Institute (Oct. 2011), available at: <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/how-many-people-are-lesbian-gay-bisexual-and-transgender/>.

2 Gates, Gary J. & Cooke, Abigail M., United States Census Snapshot: 2010, Williams Institute (Sept. 2011), available at: <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-census-snapshot-2010/>.

elders often lack traditional support systems and would benefit greatly from accessing services. Research has found that compared with heterosexual peers, LGBT elders are significantly more likely to be isolated; they are: twice as likely to live alone, half as likely to be partnered, half as likely to have close relatives to call for help, and more than four times more likely to be childless.<sup>7</sup> Research shows that diminished social and caregiving supports have been correlated with a wide range of health problems that can have serious consequences for older people, including premature institutionalization and early death. And as a consequence of these factors contributing to social isolation, LGBT elders would appear to be more vulnerable to abuse and neglect in LTC settings.

**Increased Incidence of Poverty and Income Insecurity:** LGBT older adults' lack of traditional familial supports can also have serious financial repercussions. For example, the fact that LGBT older people are much more likely to live alone limits their average household income. Nationally, same-sex partnered older adults lag behind different-sex married households in income, assets and home ownership; elder same-sex partnered households have 37.4% less income from retirement savings than elder heterosexual married couples.<sup>8</sup> Lesbian elders are often among the most marginalized, isolated elders. Older lesbian couples are twice as likely to be poor as heterosexual married couples: among couples aged 65 years and older, 9.1% of lesbian couples live below the poverty line compared to 4.6% of heterosexual married couples. LGBT elders of color and transgender elders also face significantly elevated levels of poverty. Together, the factors contributing to higher rates of poverty and income insecurity mean LGBT older adults have fewer options than their peers and are likely to be more dependent on the good will of those on whom they rely for care and support.

**Health Disparities:** A growing body of literature exists on the health disparities that affect LGBT older adults. A recent report by the Institute of Medicine of the National Academies (IOM) identified the following important health issues for LGBT people: lower rates of accessing care (up to 30%); increased rates of depression; higher rates of obesity in the lesbian population; higher rates of alcohol and tobacco use; lower rates of preventive screenings including pap tests, mammograms and prostate exams; higher risk factors of cardiovascular disease for lesbians; and higher incidents of HIV/AIDS for gay and bisexual men.<sup>9</sup> A 2011 report by the National Center for Transgender Equality and the National Gay and Lesbian Task

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3 Movement Advancement Project & SAGE, *“Improving the Lives of LGBT Older Adults,”* 2010.

4 Brotman, Ryan S., and R.B. Cormier. “The Health and Social Service Needs of Gay and Lesbian Elders and Their Families in Canada.” *The Gerontologist* 43(2): 192-202, 2003.

5 Cahill, S., South, K., Spade, J., “Outing age: Public policy issues affecting gay, lesbian, bisexual and transgender elders,” The Policy Institute of the National Gay and Lesbian Task Force. 2000.

6 The MetLife Mature Market Institute. “Survey of American Attitudes Toward Retirement,” 2005.

7 Movement Advancement Project & SAGE, *“Improving the Lives of LGBT Older Adults,”* 2010.

8 Knauer, Nancy J., *“Gay and Lesbian Elders: History, Law, and Identity Politics in the United States,”* 2011.

9 *“The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding,”* 2011.

Force documents pervasive insensitivity, refusal of care, and abusive treatment of transgender patients in emergency rooms, doctor's offices, mental health clinics and drug treatment programs.<sup>10</sup> Taken together, these health disparities and insensitivities in treatment demonstrate that LGBT older adults remain more vulnerable than their heterosexual peers.

**Structural Inequities:** The aging network is often ill-prepared to identify, engage and serve LGBT older adults. For instance, a recent survey of Area Agencies on Aging (AAAs) found that a significant percentage were not confident that LGB (24.4%) and T (28.1%) older adults would be welcomed by local aging service providers. Moreover, only a minority of agencies had received a recent request to help an LGB or T older adult. Evidence indicates that LGBT older adults are deterred from requesting support where there is no indication their presence is welcome. For example, AAAs with trained staff were three times more likely to receive a request to assist a transgender person and twice as likely to have received an LGB request for help.<sup>11</sup> The cultural competency trainings of SAGE's National Resource Center on LGBT Aging (NRC) create a more hospitable atmosphere for LGBT people and thus facilitate their requests for support; to date, however, the bulk of local aging service providers have yet to access NRC training. These structural inequities contribute to the likelihood that LGBT older adults would be more susceptible to neglect and abuse in LTC settings.

**We recommend the following:**

1. First, we recommend adding to proposed section 1327.17(a) explicit language requiring that the complaints to be identified, investigated, and resolved by the Office of the State Long-Term Care Ombudsman include complaints of discrimination on the basis of actual or perceived race, color, national origin, age, sex, disability, sexual orientation, or gender identity. We recognize that the National Ombudsman Reporting System (NORS) currently does not provide data fields for discrimination data. That being said, we believe it is important to ensure that LTC settings deliver programs and services to their residents without discrimination and that Ombudsman offices ensure that incidents of alleged discriminatory treatment are identified and resolved. While complaints of discriminatory treatment on these bases should fall within the broad category of those that affect the health, safety, welfare, or rights of residents, it has been our organizations' experience that consumers, LTC facilities, and Ombudsman offices may not see discriminatory treatment that targets individuals because of these characteristics as equally serious or as having similar recourse – particularly in cases where, as is often the case with respect to sexual orientation and gender identity, state law does not explicitly prohibit discrimination on these grounds. We recommend that the Administrator for the Administration for Community Living consult with the Administrator for the Centers for Medicare and Medicaid Services and the AoA-funded resource centers to develop appropriate protocols, demonstrations, tools, or guidance for use by State agencies to

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<sup>10</sup> Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>11</sup> “*Ready to Serve*,” 2011.

ensure successful identification and resolution of complaints and analysis and reporting of complaint data related to discrimination.

*Recommended language:*

(a) An individual designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

...

(3) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents, *including discriminatory treatment on the basis of race, color, national origin, age, disability, sex, sexual orientation, or gender identity;*

2. Second, we recommend that adding to proposed section 1327.15 explicit language requiring that training address knowledge for assisting diverse older populations, including racial, ethnic, and religious minorities and LGBT older adults. The Older Americans Act directs the Aging Network to pay particular attention to serving populations with the greatest social need. As you know, the Administration on Aging recently issued guidance to the Aging Network, recognizing that populations with the greatest social need may include those isolated by minority racial, ethnic, or religious status, or LGBT status. We often hear from organizations that work with older adults (and LGBT organizations who work with non-aged populations) that they are open to working with LGBT clients but are not sure of how to provide the best possible services. Sometimes organizations unintentionally make assumptions about LGBT older adults that can inhibit the quality of services, resulting in LGBT older adults being excluded or fearing less-than-equal treatment. LTC ombudsmen can fall prey to those same assumptions and misconceptions. To address these issues, we believe it would be advantageous to provide LTC ombudsmen with trainings on vulnerable older adult populations, including LGBT older adults, in order to create an inclusive, safe and welcoming environment. Topics could include: culture, needs, and concerns of LGBT older adults; why LGBT older

*Recommended language:*

(b) State policies, procedures or other mechanisms regarding access to records pursuant to section 712(b)(1) of the Act, shall:

...

(4)(i) Establish procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in Section 201(d) of the Act, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) Specify a minimum number of hours of initial training;

(B) Specify the content of the training, including training relating to—

(1) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(2) Investigative techniques;

*(3) Assisting diverse elder populations, including racial, ethnic, and religious minorities and lesbian, gay, bisexual, and transgender older adults; and*

~~(3)~~(4) Such other matters as the State determines to be appropriate; and

(C) Specify an annual number of hours of in-service training for all designated representatives;

3. Finally, we support the definition of “Immediate Family” pertaining to conflicts of interest as used in section 712 of the Act. The proposed definition states that “Immediate Family” means a member of the household or a relative with whom there is a close personal or significant financial relationship. We understand this language to include any member of a household, and any relative with whom there is a close personal or significant financial relationship, regardless of the existence or nonexistence of any legal relationship by blood, marriage, or adoption. For this reason, we believe this language is sufficiently broad to cover any familial conflicts of interest that may affect the mission of LTC ombudsman offices.

We appreciate the opportunity to comment on this proposed rule. LTC ombudsmen are a vital resource for all older adults, especially LGBT older adults. We hope these suggestions will serve to make the program even stronger. Thank you for your consideration.

Sincerely,

**Family Equality Council**  
**FORGE**  
**Human Rights Campaign**  
**National Center for Transgender Equality**  
**National Senior Citizens Law Center**  
**Services and Advocacy for GLBT Elders (SAGE)**