

CHAPTER XI

Trans Aging: We're Still Here!

It's not easy getting older, but transgender and gender-nonconforming (TGNC) people have especially good reasons to know their legal rights as they enter their Golden Years. The discrimination and violations of physical privacy that plague most TGNC people when they are younger become more and more likely with age, especially with increased reliance on the health care system.

In a 2011 study¹ among 6,450 transgender adults of all ages, nearly one-fifth reported being refused care outright by medical providers, with even higher rates for transgender people of color. Fifty percent said they had to take it upon themselves to teach their medical providers about transgender care. This is not to mention all those who had their needs ignored, whether denied hormone therapy or some other medical need. Or people whom nurses refused to bathe—or even touch. In a Lambda Legal survey report, *When Health Care Isn't Caring* (lambda-legal.org/publications), eight percent of TGNC participants reported physically rough or abusive treatment from health care providers.

By 2030, the LGBT population over age 65 is expected to grow to as many as 4.7 million people.² It's hard to say how

many of those are TGNC, but we do know that LGBT older adults are twice as likely to live alone as their heterosexual counterparts and more than four times as likely to have no children.³ This reality means that the sort of informal caregiving often assumed to be in place for older adults may not be there for LGBT individuals as they age. And studies show that few health care professionals are competent to meet the needs of the aging transgender population.

The good news is that there are laws in place that protect older transgender people against discrimination in health care and housing. And there are documents to sign, such as wills, powers of attorney and health care proxies that can help you retain power over your decision-making as you age. Knowing your rights can make a big difference as you navigate through issues of housing, health care and life planning.

This fact sheet offers an overview of some of the issues facing transgender older adults. If you or someone you know has been discriminated against in any way for being TGNC, please contact Lambda Legal by calling our Legal Help Desk toll-free at 866- 542-8336 or going to lambdalegal.org/help-form.

1. See National Gay and Lesbian Task Force & National Center for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, available at www.endtransdiscrimination.org/report.html.

2. See David Singleton, AARP.org, "Wisdom of the Elders: AARP and SAGE" (2009), available at www.aarp.org/politics-society/rights/info-06-2009/wisdom_of_the_elders_aarp_and_sage.html. 3. See SAGE & National Academy on an Aging Society, *Public Policy & Aging Report: Integrating LGBT Older Adults into Aging Policy & Practice* (2011), available at <http://www.sageusa.org/resources/publications.cfm?ID=27>.

MY STORY STIGMA AND FEAR STILL HAUNT MY GENERATION

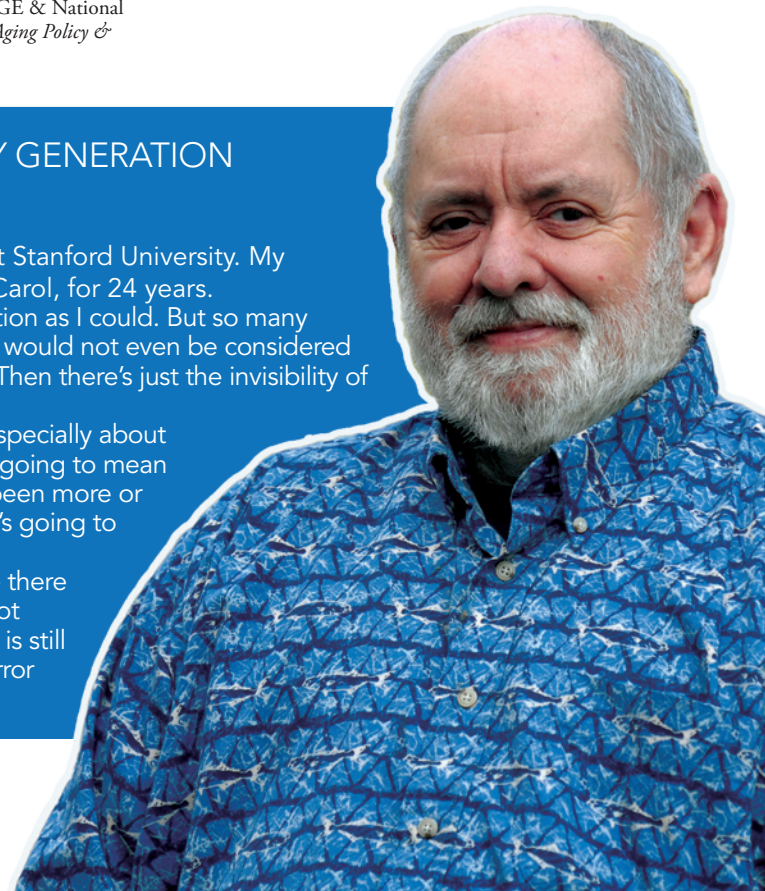
JUDE PATTON

"In 1971 I started hormones, and I had surgery in '72 and '73 at Stanford University. My family and friends were very supportive. I've been with my wife, Carol, for 24 years.

"I've kept contact with as many transgender people in my generation as I could. But so many never came out because of the stigma. Also, in the old days people would not even be considered a viable candidate for [medical] transition if they did not go stealth. Then there's just the invisibility of aging.

"Transgender people who are aging worry about privacy issues, especially about their bodies—whether or not they've had surgery—and what that's going to mean when they're in a nursing home: 'What am I going to do when I've been more or less private for all these years and then my body is exposed?' 'What's going to happen to me as a result of other people's ignorance?'

"I'm still working because I have to: I didn't go to college because there was no college that I could get into [before I transitioned] that did not have a requirement that I wear a dress. I'm very lucky that my health is still good and I have a supportive doctor—I have certainly heard the horror stories."



FAQ

Answers to Common Questions from Transgender Seniors

Q: I just entered a nursing facility and they're refusing to give me the hormone therapy that I have been taking for years. Are they allowed to do that?

A: It's definitely a violation of your rights under the Federal Nursing Home Reform Act (FNHRA) to be denied necessary care and appropriate treatment (see the sidebar "Nursing Home Rights" on the next page for more about the FNHRA). Doctors have found transition-related health care to be medically necessary for many people; in 2008, the American Medical Association passed a resolution recognizing "an established body of medical research" that "demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and gender-affirming surgery as forms of therapeutic treatment for many patients..." For a list of statements from medical professional associations supporting the medical necessity of transition-related health care, go to www.lambdalegal.org/publications.

Also, courts have repeatedly ruled that transition-related health care, including hormone therapy, is medically necessary when a doctor deems it so for an individual.

In 2011, in *Fields v. Smith*⁴, a Federal Appeals Court affirmed transgender prison inmates' rights to transition-related health care while incarcerated. For more about transgender health care rights, see "Transition-Related Health Care," also part of this Transgender Rights Toolkit, at lambdalegal.org/publications/toolkits.

Q: Staff at my nursing facility are rude to me because I'm transgender and do not allow me to dress according to who I am. Are they allowed to do that?

A: No. Under the FNHRA, "[a] nursing facility must protect and promote the rights of each resident." This protection includes the right of residents to a "reasonable accommodation of individual needs and preferences." Facilities must also "attain or maintain [a resident's] highest practicable physical, mental, and psychosocial well-being."

It's a nursing facility's job to ensure that you are treated with dignity and respect while in its care. As for your clothes, gender transition is now widely recognized by the medical community as benefiting a transgender person's psychological well-being, and one critical component is being able to live and be seen and treated by others in a manner consistent with one's gender identity.⁵

Q: What if I am denied housing because I'm transgender?

A: The Fair Housing Act (FHA) is a federal law that protects you from being denied housing, public or private. What's more, the U.S. Department of Housing and Urban Development (HUD) stated in 2012 that gender identity discrimination is prohibited in its programs.⁶ If such a thing were to happen to you, it would also be a good idea to find out if your state or municipality has a nondiscrimination law covering gender identity and expression, because such laws cover housing, including nursing facilities.

Q: Can I decide who can and can't visit me in a hospital or nursing facility?

A: Yes. Since 2010 federal regulations empower patients in hospitals to choose their own visitors. Also, hospitals are barred from discriminating against visitors based on race, ethnicity, religion, sex, gender identity, sexual orientation or disability. In addition, the FNHRA specifies that residents of nursing facilities have the right to designate who they want to visit them. Hospitals and nursing facilities are required to inform patients and residents of these rights. There are no federal standards for assisted-living facilities, but state laws generally include some right to have visitors, although the extent of such rights varies from state to state.⁷

Q: My nursing home roommate is verbally abusive because I'm transgender. Am I allowed to get a replacement?

A: You don't have to tolerate abuse from either roommates or staff. Under the FNHRA, a nursing home resident has the right "to be free from physical or mental abuse" and "to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents." The nursing home is also prohibited from forcibly isolating you from other residents.

Q: How can I make sure that I have the most possible control over my future as a transgender older adult?

A: If you don't already have a last will and testament, medical and financial power of attorney and a living will, getting those signed and distributed to the right people should be your first step. Also, if you have any special wishes about your funeral or disposition of your remains, it's a good idea to write those

4. *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011). 5. See WPATH Standards of Care at www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 6. See HUD's guidelines, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination. 7. See "Stories From the Field," available at www.lambdalegal.org/publications.

“What’s going to happen to me as a result of other people’s ignorance?”

—JUDE PATTON

down and include them with the other documents.

If you are married or have kids, talk to a lawyer or estate-planning expert to make sure your wishes for your family are clear and can't possibly be reversed by someone trying to intervene if you die or become incapacitated.

For more information about medical and financial planning, check out Lambda Legal's "Take the Power: Tools for Life and Financial Planning" at lambdalegal.org/publications/toolkits.

Q: I struggled for years over my gender identity and now I'm finally ready to transition. Should I be worried that I'm too old for hormones or surgery or that my transition won't be covered by insurance?

A: In 2014, a U.S. Department of Health and Human Services (HHS) review board ruled that the National Coverage Determination (NCD) policy of denying Medicare coverage of all transition-related surgery is not valid and that it can no longer be used to deny claims for Medicare coverage of transition-related surgery. This overturned a policy that had banned coverage for transition-related surgery for nearly 50 million beneficiaries. What the ruling means is that if you rely solely on Medicare for health coverage, as many transgender seniors do, you will now have access to the procedures that your doctors deem medically necessary.

Beyond its direct impact for Medicare recipients, this ruling also marks a broader victory for transition-related health care. Currently, very few insurance companies and employers, private or public, cover gender-affirming surgery in their health insurance plans despite both the medical consensus on the necessity of this care for transgender people and the data showing that insurance companies that do cover gender-affirming surgery are able to do so at minimal cost. HHS's ruling adds to the increasing recognition of the importance of individualized assessments of the health needs of transgender people, removing a discriminatory obstacle to equal and appropriate health care.

NURSING HOME RIGHTS THE FEDERAL GOVERNMENT PROTECTS YOU

The Federal Nursing Home Reform Act, enacted in 1987, is a comprehensive federal statute that creates a minimum set of standards of care and rights for people living in Medicare- and/or Medicaid-certified nursing facilities.

The FNHRA guarantees these rights:

- Staff must provide "care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being."
- Staff must maintain patients' capability to perform daily life functions, such as bathing and dressing, unless health problems require changes.
- Patients have "free choice" to choose a physician and to be fully informed about care and treatment.
- Patients must be free to "voice grievances...without discrimination or reprisal" for exercising their rights under the FNHRA.

FLYING SOLO

LAMBDA LEGAL VICTORY IN DEATH BENEFITS CASE

In 2014, Lambda Legal successfully appealed the denial of Social Security survivor benefits on behalf of a 92-year-old transgender woman, Robina Asti, a World War II veteran and flight instructor. The Social Security Administration denied Robina's claim stating that she was "legally male" at the time of her marriage to her spouse, disregarding the fact that Robina had been legally recognized as a woman for over three decades by state and federal agencies, including Social Security itself. Robina's story and video brought international attention to transgender seniors and helped spark a policy change for the Social Security Administration. Robina was featured in People magazine and was named one of the Advocate's "Prime Time 25: LGBT Seniors Making a Difference."

Resources

SOME USEFUL GUIDES FOR TGNC SENIORS

In 2011, Lambda Legal, along with several other organizations, published "Stories From the Field: LGBT Older Adults in Long-Term Care Facilities" (available for download at lambdalegal.org/publications).

Other organizations offering resources for TGNC seniors include:

AARP PRIDE

aarp.org/relationships/friends-family/aarp-pride

THE AIDS INSTITUTE: HIV/AIDS AND AGING AWARENESS

theaidsinstitute.org/programs/education/national-hiv-aids-and-aging-awareness-nhaaa

AMERICAN SOCIETY ON AGING: LGBT AGING ISSUES NETWORK

asaging.org/education/5

FORGE

forge-forward.org

GRIOT Circle

griotcircle.org

LEADING AGE: LGBT

leadingage.org/LGBT.aspx

NATIONAL CENTER FOR LESBIAN RIGHTS: ELDER LAW

nclrights.org/our-work/elders/

NATIONAL COALITION FOR LGBT HEALTH

healthhiv.org/

NATIONAL RESOURCE CENTER ON LGBT AGING

lgbtagingcenter.org

OLD LESBIANS ORGANIZING FOR CHANGE

oloc.org

SAGE

sageusa.org

TRANSGENDER AGING NETWORK

forge-forward.org/aging

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.