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Pushing for equality: LGBT elders need discrimination-free access to care in community

By **Michael Adams**

Many people were shocked when news first broke in 2016 that Mary Walsh and Bev Nance, an older lesbian couple in St. Louis, Mo., were denied admission to Friendship Village Sunset Hill—a local continuing care retirement community (CCRC)—on the grounds that their 10-year-old marriage and decades-long relationship was not considered a “biblical marriage.”

The shock intensified in January 2019 when a judge dismissed the federal lawsuit filed on the couple’s behalf by the National Center for Lesbian Rights on the grounds that Friendship Village’s decision to deny them admission did not break the law. Sadly, neither the admittedly biased actions of Friendship Village nor a federal court turning a deaf ear to Walsh’s and Nance’s legal claim should be surprising given the state of politics and law in this country as they relate to LGBT people, and LGBT elders specifically.

CCRCs Free to Discriminate?

First, we should address the actions of Friendship Village. *Dignity Denied* (tinyurl.com/yy84ccpj), a report on religious discrimination against LGBT elders that was released by SAGE last year, points out that 85 percent of CCRCs in America are run by faith-based organizations. The predominance of faith-based organizations in long-term care is not visible to the public because many such providers have adopted secular names to attract a broader market.

When Walsh and Nance submitted their deposit, they had no idea that Friendship Village, a non-denominational, but “faith-based” nonprofit, would reject them. What’s more, faith-based organizations—some of which are welcoming to LGBT people and some of which are not—are effectively being encouraged by the Trump Administration to discriminate against LGBT people.

The Administration has moved aggressively to try to exempt religious individuals and entities from anti-discrimination laws, while seeking to roll back legal protections for LGBT people. In 2018, the Administration established the Conscience and Religious Freedom Division at the U.S. Department of Health and Human Services, to shield medical providers who deny care based on religious or moral beliefs. The new division puts LGBT elders particularly at risk. In addition, the Administration created a Religious Liberty Task Force, which encourages discrimination. If the Administration has its way, providers nationwide may feel emboldened to follow in the footsteps of Friendship Village—if they can assert that they are faith-based organizations.

Discrimination—Legal or Illegal?

But isn't this blatant discrimination illegal? Unfortunately, the answer remains hotly contested. Most states—including Walsh's and Nance's home state of Missouri—have no state laws protecting LGBT people from discrimination. That makes federal law crucial. The couple filed their lawsuit in federal court, alleging that when Friendship Village refused them admission, it violated the Fair Housing Act's prohibition on sex discrimination because if either of them had been married to a person of a different sex, they would not have been turned away. Numerous courts have agreed with this argument and, until recently, so did the U.S. Department of Justice.

But under President Trump, the Justice Department has reversed course and now argues that discrimination against same-sex couples is not sex discrimination but sexual orientation discrimination, and that sexual orientation discrimination is not barred under federal law. Unfortunately, the court overseeing Walsh's and Nance's lawsuit agreed.

Fighting Back with Legislative Action

Where do we go from here? It is important to note that the National Center for Lesbian Rights has filed an appeal in the couple's case, so it is possible their discrimination claim will be upheld by a higher court. Such a ruling would be an important breakthrough not only for them, but also for the many LGBT older adults who are vulnerable to this kind of discrimination.

But we cannot rely on one court victory to solve this problem, especially with the rightward shift in the federal courts that the Trump Administration is rapidly engineering. That's why it is so important that Congress enact the Equality Act, legislation introduced on March 13, 2019, which would specifically prohibit sexual orientation and gender identity discrimination in employment, housing and public accommodations under federal law.

Similarly, it is important that Congress enact the LGBT Elder Americans Act, which would make LGBT older adults a priority (i.e., having the "greatest social need") population under the Older Americans Act (OAA). While the OAA does not govern the practices of long-term-care facilities, amending the OAA to make it LGBT-friendly would put the federal government legislatively on record as committed to addressing LGBT elders' needs.

Legal protections like these are critically important, but we don't know how long it will take to enact them, especially with a White House and Senate occupied by opponents of LGBT equality. It is paramount for LGBT older people to empower themselves as consumers so that they can seek long-term-care facilities that will treat them with respect and fairness.

By advocating for legal protections, empowering ourselves as consumers and pushing the long-term-care sector to get the training needed to implement inclusive policies and practices, we can change the landscape for LGBT older adults so no one is shocked and surprised when discrimination like that practiced by Friendship Village rears its ugly head. ■

Michael Adams is CEO of SAGE, an organization dedicated to improving the lives of LGBT older people, and is Chair-Elect of ASA's Board of Directors.

Resources and Strategies for Consumers

There are excellent resources available to help LGBT elders to find welcoming providers, including Ten Tips on Finding LGBT-Affirming Services ([tinyurl.com/y57q599k](https://www.tinyurl.com/y57q599k)) and Residents' Rights and the LGBT Community ([tinyurl.com/y2muljqp](https://www.tinyurl.com/y2muljqp)), both published by the National Resource Center on LGBT Aging.

SAGE also maintains a list of long-term-care providers across the country that have received LGBT cultural competency training ([tinyurl.com/yxb9nrsf](https://www.tinyurl.com/yxb9nrsf)). LGBT elders who live in areas that lack welcoming providers can advocate for change by encouraging local long-term-care facilities to get training from SAGE or a similar agency so that they become educated about LGBT elders' needs and what constitutes respectful care.

—Michael Adams