



RETHINKING AGING LAWS FOR TODAY'S OLDER ADULTS

September 2010



AGING POLICY MUST REFLECT TODAY'S REALITY

Much of the federal and state safety net to support older adults is built around the presumption of marriage. However, this presumption simply does not match the reality of today's older adults. For example:

- Almost one-third of the entire population age 65+ are widowed men and women, and 42% of women age 65+ and 59% of women age 75+ are widowed.¹
- Many heterosexual elders live in domestic partnerships (often because marrying or re-marrying would result in unaffordable financial consequences)
- Just over 4% of older adults (including those in religious orders and those who simply choose to remain single) were never married²

- Just over 4% of older adults are gay, lesbian or bisexual and may be single or in a same-sex relationship³

Policymakers need to examine ways to adapt laws and safety nets to help protect all of today's older adults. A recent report called *Improving the Lives of LGBT Older Adults*⁴ examined policy solutions to help lesbian, gay, bisexual and transgender older adults. However, many of the report recommendations would also improve the lives of heterosexual elders in domestic partnerships, or single and widowed elders who are not able to rely on a spouse for financial or caretaking support.

A summary of the report recommendations, and how they help other older adults, is provided below.

¹ U.S. Bureau of the Census web site, 2008 figures.

² Ibid.

³ Based on the UCLA's Williams Institute on Sexual Orientation and the Law's estimate that 4.1% of the adult population identifies as LGB.

⁴ Available at www.lgbtmap.org or www.sageusa.org.

RETHINKING FINANCIAL SAFETY NET LAWS

Recommendation	Whom the Recommendation Helps		
	Domestic Partners	Single/ Widowed/ Religious Order Elders	Explanation
Social Security Solutions			
Revise the federal Social Security Act to provide benefits to domestic partners	X		Same-sex couples and heterosexual domestic partners should not be denied Social Security spousal, survivor or death benefits.
Medicaid Solutions			
Revise the federal Medicaid Act to extend financial protections to domestic partners and families of choice	X	X	Same-sex partners, heterosexual domestic partners, and financially interdependent adults such as two widows living together, should not be forced to sell a home or spend down joint savings and income in order to qualify for Medicaid.

Recommendation	Whom the Recommendation Helps		
	Domestic Partners	Single/ Widowed/ Religious Order Elders	Explanation
Advocate for states to electively extend spousal impoverishment protections to domestic partners and financially interdependent elders—and to adopt broader interpretation of spend-down and cost recovery rules in order to protect domestic partners and financially interdependent elders	X	X	See above.
Advocate for states to allow single recipients of Medicaid-funded home-based care to retain a greater living wage		X	Currently, Medicaid rules allow a single older adult receiving home-based care to receive a disproportionately smaller income versus a couple in which one person receives home-base care. Single elders may therefore be prematurely institutionalized because they simply cannot make ends meet while receiving Medicaid care at home.
Tax-Qualified Retirement Plan Solutions			
Amend ERISA to allow “non-spouse” beneficiaries to draw down inherited IRAs on the same schedule as spousal beneficiaries	X	X	Same-sex couples, heterosexual domestic partners, and other older adults (e.g., two siblings) should be able to receive, and draw down, an inherited tax-qualified retirement plan on the same schedule as a heterosexual spousal beneficiary.
Employee Pension Solutions			
Amend ERISA to create a designated “non-spouse joint survivor” for QJSAs or QPSAs, and make it mandatory that businesses offer this option as part of their pension plans add financially interdependent individuals?	X	X	Any two financially interdependent individuals—including same-sex couples, heterosexual domestic partners, siblings, etc.,—should be able to designate each other for QJSAs or QPSAs, especially since offering QPSAs is cost-neutral, and offering QJSAs is extremely low cost.
Encourage employers to electively offer QJSAs and QPSAs to LGBT employees add financially interdependent individuals	X	X	See above.

Recommendation	Whom the Recommendation Helps		
	Domestic Partners	Single/ Widowed/ Religious Order Elders	Explanation
Employee Health Insurance / Domestic Partner Benefits Solutions			
Advocate for federal legislation that provides equal treatment for domestic partner benefits. Similarly, lobby relevant states to eliminate state taxes on domestic partner benefits	X	X	Any two financially interdependent individuals—including same-sex couples, heterosexual domestic partners, siblings, etc.,—should be able to designate each other for domestic partner benefits without such benefits receiving extra taxation by the state or federal government.
Work with employers to electively offer domestic partner benefits	X	X	See above.
Estate Tax Solutions			
Advocate for federal legislation that provides equal estate tax treatment for domestic partners. Similarly, advocate for relevant states to eliminate state-based estate and inheritance tax for domestic partners	X		Same-sex partners and other registered domestic partners should be able to inherit estates without incurring state or inheritance taxes.
Inheritance/Power of Attorney Solutions			
Advocate in relevant states for more inclusive default intestacy laws	X	X	Same-sex partners, heterosexual domestic partners, and any two adults who are financially interdependent (e.g., two siblings living together) should be able to inherit without a will.
Advocate for relevant states to make it easier to designate a domestic partner or other loved one for inheritance (e.g., by establishing a state registry)	X	X	Many older adults are unable to invest the emotional or financial commitment of obtaining legal paperwork pertaining to wills and financial powers of attorney. State registries can make these processes far easier for older adults.

RETHINKING HEALTH AND CARETAKING LAWS

Recommendation	Whom the Recommendation Helps		
	Domestic Partners	Single/ Widowed/ Religious Order Elders	Explanation
Family and Medical Leave Solutions			
Advocate to broaden the definition of covered caregivers in the federal FMLA and in state FMLAs	X	X	The government should not penalize any family member or other informal caregiver who takes time off work to care for a loved one. Therefore, same-sex partners, heterosexual domestic partners, siblings and others “acting as informal caregivers” should be covered under state and federal medical leave acts.
Nursing Home Solutions			
Work with HUD to create regulations that require nursing homes and assisted living facilities to allow same-sex couples and families of choice to share a bedroom	X	X	Older adults requiring nursing home or long-term institutional care should be able room with a partner, sibling or close friend if circumstances allow.
Visitation Policies and Medical and End-of-Life Decision-Making Solutions			
Advocate for more inclusive default visitation, medical decision making, funeral and disposition of remains laws (e.g., recognizing domestic partners even when AHDs are not in place)	X	X	Same-sex partners, heterosexual domestic partners, and other adults (e.g., two widows living together, the best friend of a widow with no remaining family, etc.) should be recognized for the purposes of medical and end-of-life decision making.
Lobby relevant states to make it easier to designate a partner or loved one for medical decision making (e.g., by establishing a state registry)	X	X	Many older adults are unable to invest the emotional or financial commitment of obtaining legal paperwork pertaining to medical decision making and end-of-life decisions. State registries can make these processes far easier for older adults.

ABOUT THIS BRIEF

This is one of a series of issue briefs based on content from *Improving the Lives of LGBT Older Adults*, a report which provides an in-depth examination of the issues facing LGBT elders, and potential solutions for improving their lives. For more information, visit www.lgbtmap.org or www.sageusa.org.



movement advancement project ▶

