

**AGING IN HEALTH, HONOR, AND DIGNITY: LGBT ELDERS AND THE  
OLDER AMERICANS ACT**

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## **INTRODUCTION**

Lesbian, Gay, Bisexual, and Transgender (LGBT) older individuals face a number of social, health, and financial disparities that make it difficult for them to age in health, honor, and dignity. When compared to their non-LGBT counterparts, they are at increased risk for social isolation, for poor health and healthcare access, and for living in poverty. Unfortunately, this group is less likely than others to seek federal assistance and healthcare due to actual and perceived discrimination. This policy paper seeks to address the situation by proposing that LGBT elders be included in the Older Americans Act (OAA) as a vulnerable constituency. It will first provide an overview of the OAA, its seven titles, and the targeting of services toward disadvantaged groups. Subsequently, it will examine, at length, the disparities older LGBT Americans face with regard to their support systems, health care, and financial security. Finally, it will consider a number of policy solutions, ultimately proposing that, as a first step, older LGBT individuals should be included in the OAA within the statutory definition of a group of “greatest social need.”

## **THE OLDER AMERICANS ACT**

### **OAA Background and Overview**

In 1965, Congress enacted the OAA to improve the lives of older Americans in relation to income, health, housing, employment, long-term care, retirement, and community service. The legislation sought to achieve this end by developing “new and improved programs to help older persons” through grants to States “for community planning and services and for training” of personnel in the field of aging.<sup>1</sup> The law also created State and Area Agencies on Aging (AAA’s) as well as the U.S. Administration on Aging (AoA) to manage the grant programs and

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<sup>1</sup> Older Americans Act of 1965, Pub. L. No. 89-73 (1965), Statement of Purpose.

to function “as the Federal focal point on matters concerning older persons.”<sup>2</sup> Today, the OAA serves as “the major vehicle” for promoting the delivery of social and nutrition services to older Americans and their caregivers, by authorizing a variety of “service programs through a national network of 56 State agencies on aging, 629 area agencies on aging, nearly 20,000 service providers, 244 Tribal organization, and two Native Hawaiian organizations representing 400 tribes.”<sup>3</sup> It also provides for “community service employment for low-income older Americans; training, research, and demonstration activities in the field of aging; and vulnerable elder rights protection activities.”<sup>4</sup>

### **OAA Breakdown**

In 2011, Congress appropriated \$1.9 billion for the OAA for fiscal year 2012.<sup>5</sup> These funds are distributed through a series of formula-based and discretionary grants stipulated in the OAA’s seven titles, which are summarized as follows.

#### **Title I**

Title I identifies expansive social policy objectives to improve the lives of older Americans, including adequate income in retirement, best possible physical and mental health that science can provide, procurement and maintenance of suitable housing, opportunity for employment, and notably, retirement in health, honor, and dignity.<sup>6</sup>

#### **Title II**

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<sup>2</sup> *Older Americans Act*, Administration on Aging (Dec. 27, 2010), [http://www.aoa.gov/AOARoot/AoA\\_Programs/OAA/index.aspx](http://www.aoa.gov/AOARoot/AoA_Programs/OAA/index.aspx).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>6</sup> *Older Americans Act* § 101, 42 U.S.C. §35 (2006).

Title II establishes the AoA within the U.S. Department of Health and Human Services (HHS),<sup>7</sup> lays out the responsibilities of the AoA and the Assistant Secretary for Aging,<sup>8</sup> and describes the scope of the Assistant Secretary's authority in administering the OAA's objectives.<sup>9</sup> It also mandates coordination and consultation between the AoA and other Federal agencies,<sup>10</sup> State agencies, AAA's, and grant recipients to promote the development of goals, regulations, program instructions, and other policies.<sup>11</sup> In addition, it institutes National Resource Centers, including the National Ombudsman Resource Center,<sup>12</sup> the National Center on Elder Abuse,<sup>13</sup> and the National Aging Information Center.<sup>14</sup> It also establishes the National Center on Senior Benefits Outreach and Enrollment, which creates Aging and Disability Resource Centers (ADRCs) to serve as entry points for information about the range of public and private long-term services and supports (LTSS) available to consumers.<sup>15</sup> Title II accounts for 1.4% or \$27.3 million of the total funding for the OAA.<sup>16</sup>

### **Title III**

Title III endeavors to enable older individuals to age with maximum independence and dignity<sup>17</sup> by supporting the activities of 56 State agencies on aging and 629 AAA's, which act as

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<sup>7</sup> *Id.* at § 201.

<sup>8</sup> *Id.* at § 202.

<sup>9</sup> *Id.* at § 205.

<sup>10</sup> *Id.* at § 203.

<sup>11</sup> *Id.* at § 203A.

<sup>12</sup> *Id.* at § 202(a)(18).

<sup>13</sup> *Id.* at § 202(d)(1).

<sup>14</sup> *Id.* at § 202(e)(1).

<sup>15</sup> *Id.* at § 202(a)(20).

<sup>16</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>17</sup> Older Americans Act § 301(a)(1), 42 U.S.C. §35 (2006).

advocates on behalf of older people and coordinate social service programs for them.<sup>18</sup> These activities include: supportive services, such as transportation and information services, home care, and legal assistance;<sup>19</sup> nutrition services, such as meal provision and nutrition education and counseling;<sup>20</sup> disease prevention and health promotion services, such as health risk assessments and routine health screenings;<sup>21</sup> family caregiver supportive services, such as information, assistance, counseling, training, and respite services;<sup>22</sup> and the establishment and maintenance of multipurpose senior centers. Each State is allotted Title III funding in an amount that bears the same ratio to funding as the population of older individuals in such State bears to the population of older individuals in all States.<sup>23</sup> When State agencies receive Title III funds, they are required to transfer them to AAA's to allot them accordingly within their state-defined planning and service areas.<sup>24</sup> Title III accounts for 71% or about \$1.4 billion of the total funding for the OAA.<sup>25</sup>

#### **Title IV**

Title IV provides funding for grants for research, training, and demonstration projects to expand knowledge and understanding of the older population and aging process, to promote innovate ideas and best practice programs and services to older individuals, to meet the needs for

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<sup>18</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>19</sup> Older Americans Act § 321, 42 U.S.C. §35 (2006).

<sup>20</sup> *Id.* at § 331.

<sup>21</sup> *Id.* at § 361.

<sup>22</sup> *Id.* at § 373.

<sup>23</sup> *Id.* at § 304(a).

<sup>24</sup> *Id.* at § 305(a)(2).

<sup>25</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

trained personnel in the field, and to increase awareness of citizens of all ages of the need to assume personal responsibility for their own longevity.<sup>26</sup> It finances a variety of projects in the field of aging by making grants to or entering into contracts with public and private organizations, state and area agencies on aging, and institutions of higher learning. The projects relate to a number of areas, including education, personnel training, health care, transportation, violence prevention, legal assistance, and aging in place. Title IV accounts for 1.2% or \$23.6 million of the total funding for the OAA.<sup>27</sup>

### **Title V**

Title V, which is administered by the U.S. Department of Labor (DoL),<sup>28</sup> fosters individual economic self-sufficiency and promotes useful opportunities in community service activities for unemployed low-income people, who are 55 years or older and who have poor employment prospects, in both the public and private sectors.<sup>29</sup> It does so by making grants to public and nonprofit private agencies and organizations, agencies of a State, and tribal organizations to develop employment and community service projects for older individuals.<sup>30</sup> In 2011, Title V supported about 46,000 employment positions.<sup>31</sup> Title V accounts for 23.4% or \$448 million of the total funding for the OAA.<sup>32</sup>

### **Title VI**

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<sup>26</sup> Older Americans Act § 401, 42 U.S.C. §35 (2006).

<sup>27</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>28</sup> Older Americans Act § 502(a)(1), 42 U.S.C. §35 (2006).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at § 502(b).

<sup>31</sup> Carol v. O'Shaughnessy, Older Americans Act of 1965: Programs and Funding, National Health Policy Forum, 7 (Feb. 23, 2012), [http://www.nhpf.org/library/the-basics/Basics\\_OlderAmericansAct\\_02-23-12.pdf](http://www.nhpf.org/library/the-basics/Basics_OlderAmericansAct_02-23-12.pdf)

<sup>32</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

Title VI promotes the delivery of supportive and nutrition services to American Indians, Alaskan Natives, and Native Hawaiians that are comparable to services provided under Title III of the OAA.<sup>33</sup> Title VI does this by making grants to tribal organizations. Congress enacted Title VI to preserve and restore the respective dignity, self-respect, and cultural identities of these groups,<sup>34</sup> after finding they experience a number of disparities in later years, including high unemployment, high rates of poverty, lower life expectancy, fewer long-term and healthcare facilities, fewer aging resources, substandard and over-crowded housing, less than adequate healthcare, and lower rates of service under the OAA.<sup>35</sup> Title VI accounts for 1.8% or \$34 million of the total funding for the OAA.<sup>36</sup>

## **Title VII**

Title VII authorizes a program for making allotments to States to pay for the cost of carrying out vulnerable elder rights protection activities.<sup>37</sup> The program includes an ombudsman program, a program for the prevention of elder abuse, neglect, and exploitation, and a legal assistance development program.<sup>38</sup> The ombudsman program primarily functions to identify, investigate, and resolve complaints made by or on behalf of residents of aging facilities that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents.<sup>39</sup> The prevention program serves to prevent, detect, assess, treat, intervene in, investigate, and respond to elder abuse, neglect, and exploitation, including financial exploitation by providing for public education and outreach, data collection on elder abuse, and training for

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<sup>33</sup> Older Americans Act § 601, 42 U.S.C. §35 (2006).

<sup>34</sup> *Id.* at § 602.

<sup>35</sup> *Id.* at § 611.

<sup>36</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>37</sup> Older Americans Act § 701, 42 U.S.C. §35 (2006).

<sup>38</sup> *Id.* at § 702.

<sup>39</sup> *Id.* at § 712.

caregivers, among other things.<sup>40</sup> Title VII accounts for 1.1% or \$21.8 million of the total funding for the OAA.<sup>41</sup>

### **Targeting**

Services provided under the OAA must be made available to all individuals age 60 or older. However, over the course of reauthorizing the OAA, the AoA and Congress recognized that particular individuals were not receiving services for which they were eligible.

Consequently, they included targeting references throughout the OAA that require programs and services be targeted to individuals in the following groups:

- Older individuals residing in rural areas;
- Older individuals with greatest economic need (with particular attention to low-income minority individuals and older individuals residing in rural areas);
- Older individuals with *greatest social need* (with particular attention to low-income minority individuals and older individuals residing in rural areas);
- Older individuals with severe disabilities;
- Older individuals with limited English proficiency;
- Older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and
- Older individuals at risk for institutional placement.<sup>42</sup>

The statutory language mandates that these individuals be targeted for services for which they are eligible under the OAA. It also provides for identification and service of needs specific to them, data collection on their geographic distribution, and technical assistance and training to people that provide services to them, among other things.

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<sup>40</sup> *Id.* at § 721.

<sup>41</sup> ANGELA NAPILI & KIRSTEN J. COLELLO, CONG. RESEARCH SERV., RL 33880, FUNDING FOR THE OLDER AMERICANS ACT AND OTHER ADMINISTRATION ON AGING PROGRAMS 4 (2012).

<sup>42</sup> Older Americans Act § 306(a)(4)(B)(i), 42 U.S.C. §35 (2006).

## **Greatest Need**

As the population of older Americans continues to grow<sup>43</sup> (increasing the demand for services provided by the OAA) and the “current fiscal stress and looming deficits continue to constrain available resources,”<sup>44</sup> it has become increasingly important for States and local providers to focus services on those in greatest economic and social need. The law defines “greatest economic need” as “the need resulting from an income level at or below the poverty line,”<sup>45</sup> and “greatest social need” as

the need caused by non-economic factors, which include—physical and mental disabilities; language barriers; and cultural, social, or geographic isolation, including isolation caused by racial or ethnic status, that—restricts the ability of an individual to perform normal daily tasks; or threatens the capacity of the individual to live independently.<sup>46</sup>

With respect to “greatest social need,” there has been speculation by various constituencies that this definition does not exclude other populations that experience isolation caused by other factors. Recently, the AoA issued new guidelines that put this speculation to rest by affirming that the statutory definition of “greatest social need” does not prevent communities from targeting funds to populations they identify as experiencing cultural, social, or geographic

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<sup>43</sup> When the OAA was passed in 1965, there were between 16 and 20 million Americans aged 65 or older. OLDER AMERICANS 2012 Key Indicators of Well-Being, Federal Interagency Forum on Aging-Related Statistics, 2 (2012), [http://www.agingstats.gov/Main\\_Site/Data/2012\\_Documents/docs/EntireChartbook.pdf](http://www.agingstats.gov/Main_Site/Data/2012_Documents/docs/EntireChartbook.pdf). In 2010, that number had increased to about 40 million, with projections that it will continue to grow to about 72 million in 2030. *Id.*

<sup>44</sup> KAY E. BROWN, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-1024T, OLDER AMERICANS ACT PRELIMINARY OBSERVATIONS ON SERVICES REQUESTED BY SENIORS AND CHALLENGES IN PROVIDING ASSISTANCE 14 (2010).

<sup>45</sup> Older Americans Act § 102(a)(23), 42 U.S.C. §35 (2006).

<sup>46</sup> *Id.* at § 102(a)(24).

isolation other than that caused by racial or ethnic status.<sup>47</sup> These guidelines also specifically call attention to those who may experience isolation caused by minority religious affiliation, sexual orientation, or gender identity.<sup>48</sup> They advise each planning and service area receiving funding under the OAA to “assess their particular environment to determine those populations best targeted based on greatest social need.”<sup>49</sup>

### **Reauthorization**

The OAA has been reauthorized about every five years since 1965, with Congress most recently reauthorizing it in 2006. The 2006 reauthorization extended the OAA’s provisions for another five years until 2011, at which time the statute was once again up for reauthorization. Unfortunately, reauthorization did not occur because the reauthorization bill stalled in Congress. However, as previously mentioned, the 112<sup>th</sup> Congress did appropriate \$1.9 billion for the OAA in fiscal year 2012. Earlier this year, a bill to reauthorize the statute was again introduced. Its passage is still pending.

## **LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ELDERS**

### **An Invisible Minority**

Although all older people face a number of challenges inherent in the aging process, older LGBT individuals confront serious additional barriers to successful aging that their non-LGBT counterparts do not. Mostly as a result of past and present discrimination, this “legally and socially disfavored minority,”<sup>50</sup> are at increased risk for social isolation, poor health and

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<sup>47</sup> Frequently Asked Questions (FAQs): Targeting, Administration on Aging (July 10, 2012), [http://www.aoa.gov/AoARoot/AoA\\_Programs/OAA/resources/Faqs.aspx#English](http://www.aoa.gov/AoARoot/AoA_Programs/OAA/resources/Faqs.aspx#English).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 4 (2010).

healthcare access, and living in poverty. Unfortunately, the needs of LGBT elders frequently go unacknowledged because older LGBT individuals are largely invisible to the rest of society, despite their significant numbers.<sup>51</sup> This invisibility is even more pronounced for older transgender individuals, as “transgender is often the silent T in LGBT.”<sup>52</sup>

### **Social Isolation**

Social isolation occurs when an individual is “cut off from the larger society and unable to access needed social and medical services.”<sup>53</sup> Older LGBT individuals are at increased risk for social isolation because they lack traditional sources of support and caregiving. According to a national needs assessment conducted by Services & Advocacy for GLBT Elders (SAGE), older LGBT individuals are four times less likely to have children and grandchildren and twice as likely to live alone.<sup>54</sup> They are also frequently estranged from their families of origin.<sup>55</sup> Consequently, LGBT elders often find themselves without the traditional support from spouses, children, siblings, or other relatives to help them age in place. LGBT elders attempt to fill this gap through “chosen families”<sup>56</sup> that provide support and caregiving. However, because chosen family networks are usually made up of members of the same generation, they may not be as

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<sup>51</sup> The AoA estimates that there are between 1.75-4 million LGBT Americans ages 60 and over. Diversity: Lesbian, Gay, Bisexual, and Transgender (LGBT), Administration on Aging (June 6, 2012), [http://www.aoa.gov/AoA\\_programs/Tools\\_Resources/diversity.aspx#LGBT](http://www.aoa.gov/AoA_programs/Tools_Resources/diversity.aspx#LGBT).

<sup>52</sup> Diane I. Person, *Unique Challenges of Transgender Aging*, J. OF GERONTOLOGICAL SOC. WORK, 633, 634 (2009).

<sup>53</sup> NANCY J. KNAUER, GAY AND LESBIAN ELDERS, 45 (2011).

<sup>54</sup> JAMIE M. GRANT, OUTING AGE 86-87 (2010).

<sup>55</sup> *Id.*

<sup>56</sup> Chosen families are “fictive kinship networks,” NANCY J. KNAUER, GAY AND LESBIAN ELDERS 45 (2011), that are “based on affinity rather than biology or marriage.” Nancy J. Knauer, *Gen Silent*, THE ELDER LAW JOURNAL 289, 303 (2012).

able to provide the necessary support and caregiving as “chosen family members age in unison and become increasingly infirm.”<sup>57</sup>

LGBT elders are also at increased risk for social isolation due to a lack of outreach and services specific to them. In a recent study by the National Association of Area Agencies on Aging (n4a) of 316 AAA’s and 4 State Units on Aging (SUA’s), only 109 aging agencies offered or funded training to staff related to LGB aging and only 101 on transgender aging.<sup>58</sup>

Additionally, less than one-tenth of the participating agencies offered services targeted to LGB (7.8%) and T (7.2%) older adults, and only 12.5% reported outreach to LGB older individuals and 12.2% to older transgender individuals, despite the fact that 31.3% of the agencies received requests for assistance for LGB older individuals and 19.1% for older transgender individuals.<sup>59</sup> SAGE has remarked that though some progress has been made in recent years, the exclusion of LGBT elders from aging agencies and the lack of services for them is still a significant problem.<sup>60</sup>

With respect to the available mainstream senior services designed to prevent social isolation, LGBT elders may avoid or neglect to use them due to past and present discrimination. Today’s LGBT elders grew up during an era when homosexuals were branded as “criminals, sinners, and physically or mentally ill.”<sup>61</sup> They were subject to criminal sanctions under anti-sodomy<sup>62</sup> and cross-dressing laws, and medical interventions such as “electroshock therapy,

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<sup>57</sup> *Id.* at 305-06.

<sup>58</sup> KELLY ABEL KNOCH & CATHERINE F. CROGHAN, *READY TO SERVE? THE AGING NETWORK AND LGB AND T OLDER ADULTS* 8 (2010).

<sup>59</sup> *Id.* at 9-11.

<sup>60</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, *IMPROVING THE LIVES OF LGBT OLDER ADULTS* 49 (2010).

<sup>61</sup> *Id.* at 5.

<sup>62</sup> The U.S. Supreme Court struck down the last sodomy laws in 2003 in *Lawrence v. Texas*. *Lawrence v. Texas*, 539 U.S. 558 (2003).

aversion conditioning, and even lobotomy.”<sup>63</sup> <sup>64</sup> Even today, LGBT elders continue to face discrimination from aging and health service providers and their non-LGBT peers. In long-term care facilities (LTCF’s), for example, LGBT elders report “service providers refused to provide basic services, such as bathing, toileting, and feeding because they objected to touching an LGBT individual.”<sup>65</sup> In addition, they describe extreme “verbal and physical harassment by other residents.”<sup>66</sup> In some egregious cases, this has resulted in the transfer of “residents who are perceived to be LGBT to secure ‘memory wards’ to placate the prejudices of other residents.”<sup>67</sup> It is unsurprising that older LGBT individuals “are only 20% as likely as their heterosexual peers to access needed services” in light of these accounts.<sup>68</sup>

It might be expected that LGBT elders can turn to the larger LGBT community to fill in the gaps where traditional sources of senior support fail them. Unfortunately, ageism within the community causes older LGBT adults to experience further marginalization and social isolation. In particular, ageism presents a significant obstacle to intergenerational relationships among gay males. One study reports that 44% of older gay men feel ignored because of their age and 42% express that the “LGBT movement does not do enough to engage older LGBT people in social activities.”<sup>69</sup>

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<sup>63</sup> Nancy J. Knauer, *Gen Silent*, THE ELDER LAW JOURNAL 289, 290 (2012).

<sup>64</sup> Homosexuality was entirely declassified as a mental illness by the American Psychological Association in 1986. However, transexualism is still included in the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* as a mental disorder called gender-identity disorder (GID). Diane I. Person, *Unique Challenges of Transgender Aging*, J. OF GERONTOLOGICAL SOC. WORK, 633, 636 (2009).

<sup>65</sup> Nancy J. Knauer, *Gen Silent*, THE ELDER LAW JOURNAL 289, 320 (2012).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 321.

<sup>68</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 5 (2010).

<sup>69</sup> *Id.* at 49.

Isolation from the LGBT community also affects older transgender adults. As previously mentioned, transgender is often the silent T in LGBT. The Aging and Health Report<sup>70</sup> observes transgender elders “are less likely to have positive feelings about belonging to the LGBT community than non-transgender older adults.”<sup>71</sup> This may be due to the fact that LGBT organizations and advocates sometimes fail to address the specific challenges pertaining to the issue of gender identity.

### **Poor Health**

Health disparities experienced by LGBT elders are likely linked to social isolation, as well as to victimization and stigma, which can impact both physical and mental health.<sup>72</sup> For instance, older adults who are socially isolated are more likely to experience elder abuse,<sup>73</sup> “presumably because the perpetrator is the sole contact in the elder’s life or because the elder has little or no opportunity to report the abuse to others.”<sup>74</sup> In the case of LGBT elders, abuse is most likely more prevalent because older LGBT individuals “are accustomed to substandard treatment” on account of their actual or perceived sexual orientation or gender identity.<sup>75</sup> <sup>76</sup> One study of older LGBT adults observed, “eight percent had experienced homophobic neglect and

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<sup>70</sup> This report is the first ever research project funded by the National Institutes of Health and the National Institute on Aging that addresses the aging and health of LGBT adults ages 50 and older and their caregivers. The project surveyed 2,560 LGBT adults age 50 to 95 across the nation. 56% of participants were 65 years of age and older. KAREN I. FREDRIKSEN-GOLDSSEN ET AL., THE AGING AND HEALTH REPORT 9-12 (2011).

<sup>71</sup> *Id.* at 16.

<sup>72</sup> *Id.* at 19.

<sup>73</sup> “Elder abuse refers to the physical, sexual, emotional, or psychological abuse of individuals aged 65-plus by people known to them, as well as to their financial or material exploitation, abandonment, neglect, or self-neglect.” JAMIE M. GRANT, OUTING AGE 51 (2010).

<sup>74</sup> *Id.* at 92

<sup>75</sup> *Id.* at 52

<sup>76</sup> Furthermore, LGBT elders may be even more likely targets because they are less likely to report the abuse for fear of being “outed” by their abuser. *Id.*

nine percent had experienced financial exploitation or blackmail.”<sup>77</sup> Obviously, elder abuse, no matter the form, has serious consequences for both the physical and mental health of LGBT elders.

With respect to mental health, older LGBT individuals report higher levels of depression and anxiety (31%), suicidal ideation (39%), and loneliness (53%).<sup>78</sup> Alarming, rates of depression and suicidal ideation were even higher among transgender elders (respectively, 48% and 71%).<sup>79</sup> Regarding depression and suicidal ideation, these higher rates among older LGBT individuals are undoubtedly connected to the higher rates of victimization they have experienced: 82% percent of LGBT elders report having been victimized at least once, and 64% report experiencing victimization at least three times in their lives.<sup>80</sup> These higher rates are also probably correlated with the discrimination older LGBT adults have endured: more than 50% of LGBT elders have experienced discrimination in the context of employment and housing.<sup>81</sup>

Together, victimization and discrimination send LGBT individuals negative messages about who they are, which may be internalized and “have serious effects on health.”<sup>82</sup> They can also lead to hazardous health behaviors, such as smoking, excessive drinking, drug use, and HIV risk behaviors, including unprotected sex and intravenous drug use. To be sure, 9% of LGBT elders currently smoke, 10% are excessive drinkers,<sup>83</sup> and almost 12% have recently used drugs other than those prescribed for medical reasons. Additionally, 18% have recently engaged in at

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<sup>77</sup> *Id.*

<sup>78</sup> KAREN I. FREDRIKSEN-GOLDSSEN ET AL., THE AGING AND HEALTH REPORT 26-28 (2011).

<sup>79</sup> *Id.* at 26-27.

<sup>80</sup> *Id.* at 19.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 20.

<sup>83</sup> This is double the rate of the general aging population. A Profile of Older Americans: 2011, Administration on Aging (Feb. 10, 2012), [http://www.aoa.gov/aoaroot/aging\\_statistics/Profile/2011/14.aspx](http://www.aoa.gov/aoaroot/aging_statistics/Profile/2011/14.aspx).

least one HIV risk behavior.<sup>84</sup> These risky behaviors, in turn, have demonstrably adverse effects on the physical health of older LGBT adults.

In fact, 23% of older LGBT individuals report poor general health.<sup>85</sup> This is unsurprising given their higher rates of disability, obesity, cardio-vascular disease, and HIV, all of which put LGBT elders at higher risk “for other chronic illnesses and premature death.”<sup>86 87</sup> Indeed, many older LGBT individuals have been diagnosed with other health conditions, “including high blood pressure (45%), high cholesterol (43%), arthritis (34%), cataracts (22%), asthma (16%), diabetes (15%), hepatitis (11%), and osteoporosis (11%).<sup>88</sup> Overall, more research needs to be conducted to better understand and address these serious health disparities.<sup>89</sup>

### **Poor Healthcare Access**

Poor healthcare access also contributes to the aforementioned health disparities LGBT elders experience. Healthcare access refers to “the extent to which a person can obtain medical services.”<sup>90</sup> As with social isolation, past and present discrimination place LGBT elders at increased risk for poor healthcare access. For instance, the legacy of discrimination against LGBT individuals by the medical profession causes LGBT older adults to distrust healthcare providers. In fact, 15% of LGBT elders fear accessing healthcare outside of the LGBT

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<sup>84</sup> KAREN I. FREDRIKSEN-GOLDSSEN ET AL., THE AGING AND HEALTH REPORT 35-36 (2011).

<sup>85</sup> *Id.* at 22.

<sup>86</sup> Forty-four percent of LGBT elders report that they are limited due to physical, mental, or emotional problems. *Id.* Twenty-six percent of LGBT elders are obese, and about 40% of transgender older adults are obese. *Id.* at 23. Six percent have had a heart attack, 4% angina, 4% stroke, and 3% congestive heart failure. *Id.* Nine percent are living with HIV. *Id.*

<sup>87</sup> *Id.* at 25.

<sup>88</sup> *Id.* at 23.

<sup>89</sup> Citing both the Institute of Medicine and the Centers for Disease Control and Prevention (CDC), the Aging and Health Report notes that LGBT older adults “are one of the least understood groups in terms of their aging and health-related needs.” *Id.* at 7. This is unsurprising given that their aging and health needs are scarcely addressed in services, policies, or research.

*Id.*

<sup>90</sup> *Id.* at 30.

community, and 8% fear accessing it even within the LGBT community.<sup>91</sup> To complicate matters, many older LGBT individuals presumably have insurance coverage through Medicare, and consequently, are limited in which providers they can access. As a result, many may delay or avoid seeing a medical professional even when it is absolutely necessary.

Additionally, when LGBT elders do access healthcare, a significant number of them (21%) do not reveal their sexual orientation or gender identity to their primary physician, most likely out of fear of discrimination.<sup>92</sup> This is very problematic because nondisclosure presents a huge barrier to obtaining adequate healthcare, since it can lead to failure to diagnose serious medical problems. It can also prevent critical conversations about sexual health, risk of cancer, hepatitis, sexually transmitted infections (STIs), HIV risk, hormone therapy, and other risk factors.<sup>93</sup>

LGBT elders' fear of continuing discrimination at the hands of medical professionals is not unfounded. More than one in ten (13%) older LGBT individuals report being denied healthcare or provided with inferior care because of their sexual orientation or gender identity, and more than 4% have experienced this more than three times in their life.<sup>94</sup> Transgender older adults, in particular, are more likely (40%) to have been denied healthcare or provided with inferior care.<sup>95</sup> This may be due to the fact that it is more difficult to conceal one's gender identity than it is to conceal one's sexual orientation. Where discrimination in healthcare is not overt, concerns about adequate treatment persist in light of the fact that many medical and healthcare professionals do not know enough about LGBT specific health problems or the

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<sup>91</sup> *Id.* at 31.

<sup>92</sup> *Id.* at 4-5.

<sup>93</sup> *Id.* at 5.

<sup>94</sup> *Id.* at 31.

<sup>95</sup> *Id.*

prejudice LGBT individuals confront, “nor do they consistently ask about sexual orientation or gender identity during visits.”<sup>96</sup>

In addition to direct discrimination by medical professionals, LGBT older adults also necessarily have concerns about discrimination in healthcare settings with respect to privacy and visitation policies. Because these policies largely exclude same-sex partners and non-biological family (e.g. chosen family), they can complicate the health decision-making process.<sup>97</sup> They can also result in having an LGBT elder’s end-of-life-preferences for care ignored.<sup>98</sup> Though these obstacles may be overcome with proper legal documentation authorizing spouses and/or chosen family members to ensure that the LGBT elder’s wishes are honored, obtaining such documentation may be prohibitively expensive. Furthermore, having legal documentation does not guarantee that they will be honored. This is especially true in states that have passed laws to invalidate such documents.<sup>99</sup>

Aside from past and present discrimination, older LGBT adults are also at increased risk for poor healthcare because of financial obstacles. According to the Aging and Health Report, 7% of LGBT older adults reported having needed to see a doctor in the past year but were unable to because of cost, including 7% of lesbians, 12% of bisexual women, 6% of gay men, 9% of bisexual men, and 22% of transgender adults.<sup>100</sup> Along the same lines, 7% of older LGBT individuals reported having needed medication but were not able to afford it.<sup>101</sup> As with other

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<sup>96</sup> JAMIE M. GRANT, *OUTING AGE 70* (2010).

<sup>97</sup> *Id.* at 61.

<sup>98</sup> *Id.*

<sup>99</sup> For instance, the Virginia Marriage Affirmation Act of 2004 strips “away the ability of same-sex couples to use private contract to define their rights and responsibilities.” NANCY J. KNAUER, *GAY AND LESBIAN ELDERS 109* (2011).

<sup>100</sup> KAREN I. FREDRIKSEN-GOLDSSEN ET AL., *THE AGING AND HEALTH REPORT 30* (2011).

<sup>101</sup> *Id.*

previously mentioned statistics, transgender older adults are more likely to experience financial obstacles than non-transgender older adults.<sup>102</sup>

### **Living in Poverty**

The economic difficulties experienced by LGBT adults in their later years compound the problems of social isolation and poor health and healthcare access. Contrary to “the myth of gay affluence,”<sup>103</sup> LGBT elders are at higher risk for financial insecurity and living in poverty primarily due to years of workplace discrimination and “[a]nti-LGBT discrimination built into the federal safety net for elders.”<sup>104</sup> They are also at higher risk because they are less likely to be partnered and more likely to live alone, which means that their sources of household income are inevitably more limited.<sup>105</sup>

In general, 42% of older LGBT individuals report that financial problems are a significant concern in their lives, and 30% express their concerns about meeting their basic housing and shelter needs.<sup>106</sup> These concerns are not without merit. Although reliable data regarding the poverty rates of transgender elders is scant, a study by the William’s Institute at UCLA reveals that older gay and lesbian couples experience poverty rates higher than married heterosexual couples.<sup>107</sup> Lesbian couples, in particular, are two-times more likely to be poor than heterosexual couples.<sup>108</sup> This is most likely due to the fact that they are doubly disadvantaged

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<sup>102</sup> *Id.*

<sup>103</sup> NANCY J. KNAUER, GAY AND LESBIAN ELDERS 111 (2011).

<sup>104</sup> JAMIE M. GRANT, OUTING AGE 54 (2010).

<sup>105</sup> *Id.* at 55.

<sup>106</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 12 (2010).

<sup>107</sup> *Id.* at 11.

<sup>108</sup> *Id.*

because of the “combined effects of their sexual orientation and the gender gap in wages and savings.”<sup>109</sup>

Many LGBT elders “lived the majority of their working years” when employment discrimination on the basis of sexual orientation and gender identity was legal and job opportunities for LGBT people were limited and unlikely to include health benefits and pensions.<sup>110 111</sup> According to the Aging and Health Report, 22% of LGBT elders report not being hired for a job due to their LGBT status, 21% report not being given a job promotion, and 14% report being fired.<sup>112</sup> Additionally, the Williams Institute has determined that LGBT individuals continue to earn less than similarly qualified non-LGBT individuals.<sup>113</sup> This lifetime of discrimination “translates into earnings disparities, reduced lifelong earnings, smaller Social Security payments, and fewer opportunities to build pensions.”<sup>114</sup> Consequently, many older LGBT individuals have low incomes and limited assets.<sup>115</sup> This is especially true for transgender elders because transgender individuals are even more likely to “experience high rates of unemployment and underemployment over the course of their working lives.”<sup>116</sup>

The financial insecurity resulting from this lifetime of discrimination is exacerbated by the failure of government safety net programs, such as Social Security and Medicaid, to fully protect and support older LGBT individuals. This failure is primarily a consequence of the Defense of Marriage Act (DOMA), which defines marriage for federal purposes to be between

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Although employment discrimination against LGBT individuals is less acceptable today, there is currently no federal law protecting LGBT individuals from such discrimination.

<sup>112</sup> KAREN I. FREDRIKSEN-GOLDSSEN ET AL., *THE AGING AND HEALTH REPORT* 19 (2011).

<sup>113</sup> JAMIE M. GRANT, *OUTING AGE 54* (2010).

<sup>114</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, *IMPROVING THE LIVES OF LGBT OLDER ADULTS* 11 (2010).

<sup>115</sup> JAMIE M. GRANT, *OUTING AGE 54* (2010).

<sup>116</sup> *Id.*

one man and one woman. By defining marriage in this way, DOMA mandates the exclusion of LGBT elders from “the entire array of federal spousal benefits”<sup>117</sup> that individuals usually rely heavily upon in later years.

For example, although LGBT elders pay into Social Security<sup>118</sup> in the same way as their non-LGBT peers, they are denied the spousal, survivor, and death benefits provided to opposite-sex married couples. It has been estimated that the lack of spousal benefits and survivor benefits alone can respectively cost an LGBT elder up to \$14,076 and \$28,152 a year in lost benefits.<sup>119</sup> This is a tremendous amount of foregone income when considering that the median annual income for Americans ages 65 and older is \$38,304 for married couples, and \$15,928 for non-married elders.<sup>120</sup> Interestingly, divorced heterosexual elders who were married for 10 years are eligible for these benefits as long as they are not remarried.<sup>121</sup>

LGBT older adults are also denied the application of the Medicaid spousal impoverishment rules, which protect a healthy spouse from losing the home and/or living in poverty when the other spouse requires long-term care. Long-term care is extremely expensive and not covered by Medicare, so when an individual requires long-term care, they may apply for assistance through Medicaid. But in order to qualify for Medicaid, elders generally have to spend down their income and assets to meet the thresholds imposed by Medicaid. The spousal impoverishment rules protect married heterosexual applicants from financially depleting themselves by allowing the healthy spouse to keep the home, substantial assets, and a living-

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<sup>117</sup> Nancy J. Knauer, *Gen Silent*, THE ELDER LAW JOURNAL 289, 336 (2012).

<sup>118</sup> Social Security is the largest and most important entitlement program for older Americans with 89% of all elder households receiving Social Security payments. SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 12 (2010).

<sup>119</sup> *Id.* at 13.

<sup>120</sup> *Id.* at 10.

<sup>121</sup> *Id.* at 14.

wage income.<sup>122</sup> However, because same-sex couples are not considered married for federal purposes as a result of DOMA, they are not eligible for this protection.

As with Social Security, LGBT individuals whose partners served in the military are also not eligible for federal benefits and certain state benefits granted to surviving spouses of active service members and of veterans.<sup>123</sup> “Over 25% of elders in the United States are military veterans.”<sup>124</sup> The U.S. Department of Veterans Affairs provides a number of benefits to veterans’ opposite-sex spouses, including “pensions paid to the spouse of a service member killed in combat, medical care, and home-loan guarantees.”<sup>125</sup> Despite the fact that older LGBT veterans served their country honorably, these benefits are unavailable to them and their spouses.

Where particular benefits are available to LGBT individuals and their spouses, LGBT elders may not be able to take advantage of them because federal tax law disadvantages same-sex couples. For example, employers are allowed to offer health insurance to the spouse of an employee or retired employee. In the case of opposite-sex couples, whose marriage is federally recognized, this provision is a tax-free benefit. For same-sex spouses, however, the federal law “treats the value of the partner’s insurance as taxable income and the LGBT retiree then pays income taxes on this benefit.”<sup>126</sup> This costs the average LGBT employee \$1,069 more per year in taxes.<sup>127</sup> As a result of this disparity, “many same-sex elders simply are not offered, or cannot afford to receive, domestic partner benefits.”<sup>128</sup>

**INCLUSION IN THE OLDER AMERICANS ACT: “GREATEST SOCIAL NEED”**

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<sup>122</sup> *Id.* at 15.

<sup>123</sup> JAMIE M. GRANT, *OUTING AGE 59* (2010).

<sup>124</sup> SERVICES & ADVOCACY FOR GLT ELDERS & LGBT MOVEMENT ADVANCEMENT PROJECT, *IMPROVING THE LIVES OF LGBT OLDER ADULTS 22* (2010).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 20.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

## **A Potential Solution**

As evident from the above discussion, older LGBT Americans face significant obstacles to aging in health, honor, and dignity. Their chances for successful aging may be improved by accessing services provided under the OAA. Unfortunately, due to past and present discrimination and prejudice, older LGBT individuals are considerably less likely than their non-LGBT peers to access such needed services. Specifically including LGBT elders in the OAA as a group of “greatest social need” would serve to ameliorate the aforementioned disparities and further the purpose of the statute by targeting LGBT elders for services for which they are eligible. It would provide for the identification and service of needs specific to LGBT older adults, data collection on their geographic distribution, and technical assistance and training to people that provide services to them.

## **Greatest Social Need**

As previously mentioned, the OAA targets services to those in greatest economic and social need. “Greatest social need” is defined as:

the need caused by non-economic factors, which include—physical and mental disabilities; language barriers; and cultural, social, or geographic isolation, including isolation caused by racial or ethnic status, that—restricts the ability of an individual to perform normal daily tasks; or threatens the capacity of the individual to live independently.”<sup>129</sup>

Recently, the AoA issued new guidelines specifying that communities may target funds to populations experiencing cultural, social, or geographic isolation other than that caused by racial or ethnic status.<sup>130</sup> The guidelines specifically identified those who may experience isolation

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<sup>129</sup> Older Americans Act § 102(a)(24), 42 U.S.C. §35 (2006).

<sup>130</sup> Frequently Asked Questions (FAQs): Targeting, Administration on Aging (July 10, 2012), [http://www.aoa.gov/AoARoot/AoA\\_Programs/OAA/resources/Faqs.aspx#English](http://www.aoa.gov/AoARoot/AoA_Programs/OAA/resources/Faqs.aspx#English).

caused by sexual orientation or gender identity, and advised each planning and service area receiving OAA funding to “assess their particular environment to determine those populations best targeted based on greatest social need.”<sup>131</sup> While these changes should be applauded, in the long run they may not be enough for older LGBT adults.

For example, due to the lack of information on LGBT elders, it will be difficult for planning and service areas to adequately assess their particular environment to determine how to meet the unique needs of this vulnerable constituency. Additionally, planning and service areas in more conservative parts of the country may lack the impetus to make an assessment that takes into account older LGBT individuals regardless of data. Finally, because money is tight all around, planning and service areas might not have the resources to undertake such an assessment. Consequently, these guideline changes fall short of addressing the needs of LGBT elders, though they are undoubtedly a big step in the right direction.

Amending the Older Americans Act to include LGBT elders as a group of greatest social need can help to close this gap. Inclusion in the statute would mean more data collection regarding the particular needs and geographic distribution of LGBT elders, which would translate into information that would inform planning and service area assessments. It would also mean a more uniform application of the AoA’s guidelines with respect to LGBT elders, since there would be financial consequences, namely loss of funding, for planning and service areas that did not follow the law. Lastly, it would ensure such funding is available in order for planning and service areas to follow the law and consider the disparities older LGBT individuals face. This last piece is especially important in light of the upcoming election because it would make the availability of such funding more certain regardless of who is in the White House.

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<sup>131</sup> *Id.*

## **Conclusion**

The purpose of the Older Americans Act is to improve the lives of all older Americans and to enable them to retire in health, honor, and dignity. This purpose is left largely unfulfilled with respect to LGBT elders as the OAA does little to address the unique challenges they face. In order to further the purpose of the statute and address these challenges, LGBT elders should be included in the statute as a group of “greatest social need.”