



# Fighting for Survival

## Why Gay and Transgender Communities Should Care About Health Reform

By Kellan Baker June 21, 2012

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### Introduction

Imagine standing next to a hospital bed, watching someone fight for his or her life.

No one would ever want to be in that position. And mounting doubts darken the picture even further: Is the patient receiving the best care possible? Are the hospital's doctors and nurses stretched too thin to catch an emergency before it happens? Does the patient have enough insurance coverage to pay for an expensive stay in the hospital, and who picks up the tab if not?

The Affordable Care Act is helping us answer these questions. Among other priorities, the law calls on health care providers, facilities, and insurers to focus on improving the quality of care every patient receives. It emphasizes the importance of strengthening the health care workforce, and it establishes new protections in the health insurance market that make insurance more affordable and comprehensive.

But no step forward comes without a fight, and the Supreme Court is expected to decide the 26-state lawsuit against the Affordable Care Act during the last week of June.<sup>1</sup> The lawsuit attempts to challenge commonsense provisions of reform such as the expansion of the Medicaid program to cover lower-income people without insurance and the requirement that each individual secure a minimum level of health insurance coverage to pay for the costs of the medical care each of us may need at some point in our lives.

Similar to the millions of others in America who are falling through the cracks of the prereform health system, gay<sup>2</sup> and transgender people should care about the outcome—because they have a lot to lose without health reform.

According to Department of Health and Human Services Secretary Kathleen Sebelius, “LGBT Americans face numerous barriers to health—from providers who just don’t understand their unique health needs, to difficulty getting health insurance because

they can't get coverage through a partner or a spouse. And unfortunately way too many LGBT individuals face discrimination and bigotry in the health care system."

Fortunately, she notes, "the Affordable Care Act may represent the strongest foundation we have ever created to begin closing LGBT health disparities."<sup>3</sup> Below are some of the law's numerous benefits for gay and transgender individuals and communities.

### Data collection to better understand gay and transgender health disparities

According to the law, the secretary of Health and Human Services may collect any demographic data he or she believes to be important for understanding and addressing health disparities. In June 2011 Secretary Sebelius announced a plan for including sexual orientation and gender identity in national data collection efforts starting in 2013, in addition to the law's required categories of race, ethnicity, primary language, sex, and disability status.<sup>4</sup> The state-based health insurance exchanges, which will sell affordable private health insurance coverage starting in 2014, also offer an opportunity to gather data on the insurance needs and experiences of gay and transgender enrollees.

### Patient's Bill of Rights to end health insurance industry abuses

The new Patient's Bill of Rights outlaws many of the insurance industry's worst abuses. It ended lifetime limits on coverage in 2010 and will phase out annual limits on coverage by 2014, both of which are particularly important for people with high medical bills from conditions such as HIV or cancer. As of 2014 it also prohibits insurance carriers from denying coverage on the basis of a pre-existing condition such as HIV or a transgender medical history and from arbitrarily canceling a sick person's coverage.

### Expansion of public insurance coverage through Medicaid

The law sets a new national threshold for Medicaid eligibility. Starting in 2014 adults under age 65 who make less than \$15,000 per year will be eligible for Medicaid coverage in every state. These 16 million newly eligible Medicaid beneficiaries will include many gay and transgender Americans and their families, since widespread discrimination in the workplace and in relationship recognition means gay and transgender people are disproportionately likely to have lower incomes and to be uninsured.<sup>5</sup>

In particular, the expansion will benefit those living in the 10 states with the most restrictive current Medicaid eligibility standards, including Texas, Alabama, Arkansas, Virginia, and Louisiana. These 10 states are home to an estimated 1.5 million gay and

transgender Americans, many of whom are lower-income African American and Latina lesbian couples raising children.<sup>6</sup>

### Expansion of private insurance coverage through the exchanges

The law also requires every state to operate a health insurance exchange starting in 2014. The exchanges will offer subsidies that allow small employers and individuals who make between \$15,000 and \$43,000 per year to purchase affordable private coverage. Exchanges may not discriminate on the basis of sexual orientation or gender identity in any of their activities, and all exchange plans must offer comprehensive benefits across 10 essential health benefit categories, including prescription drugs, hospital stays, and mental and behavioral health services.

### Coverage of preventive care

Under the Affordable Care Act, all Medicare beneficiaries receive free annual check-ups, and insurance companies may not charge co-pays or other fees for preventive services that are recommended by the U.S. Preventive Services Task Force.<sup>7</sup> These services include HIV and other sexually transmitted infection testing, depression screening, vaccinations, tobacco-use screening, cholesterol and high-blood-pressure screening, and other services of particular importance for gay and transgender people. The Women's Health Amendment also requires insurers to cover comprehensive preventive services for women, including contraception, intimate-partner violence screening, and annual well-woman visits.

### Easy-to-find information about health reform for consumers

The website [www.healthcare.gov](http://www.healthcare.gov)—one of the consumer-friendly reforms the law requires—is the one-stop shop the Department of Health and Human Services maintains for all things related to health reform. The site offers a wide range of information about the law, including a Health Plan Finder tool that allows consumers shopping for coverage to compare plan details such as cost-sharing and benefit design in order to choose the option that best meets their needs.

Same-sex couples, many of whom do not have access to health insurance through their own or their partner's employer, can use a built-in filter to find plans offering coverage for domestic partners. The exchanges may also offer relevant information to gay and transgender consumers through outreach and enrollment mechanisms such as websites, phone services, and navigator programs.

## A diverse and culturally competent health care workforce

The law prioritizes building a culturally competent and diverse health care workforce, with a particular focus on primary care providers. The law triples the size of the National Health Service Corps, which places newly trained health care providers in underserved areas around the country, and the corps is offering gay and transgender cultural competence training to its members.

In addition, an \$11 billion fund supports new community health centers and expansion of existing centers, and several centers that historically focus on serving the gay and transgender population have already received grants. The law also requires the exchanges to ensure access to community health centers and essential community providers, including Ryan White Providers for HIV/AIDS care.

## Services for people living with HIV or AIDS

A major aspect of health reform is making prescription drugs more affordable, which will help seniors and people living with HIV or AIDS afford the medications they need. The law phases out the Medicare Part D “donut hole” (the gap in insurance coverage for prescription drugs) by 2020, and requires pharmaceutical companies to provide a 50 percent discount on brand-name drugs in the donut hole. To connect people living with HIV to health coverage and services, the law:

- Prohibits insurers from using pre-existing condition exclusions and charging higher premiums based on health status starting in 2014
- Removes the requirement that people with HIV have an AIDS diagnosis before they can qualify for Medicaid coverage
- Promotes patient-centered medical homes in which providers work together to coordinate high-quality and timely care for people with chronic conditions

## Nondiscrimination protections

The Affordable Care Act extends federal nondiscrimination protections under the Americans with Disabilities Act and the Rehabilitation Act, which protect individuals living with HIV or AIDS, and Title IX of the Education Amendments of 1972, which offer protections on the basis of sex.<sup>8</sup> A national trend in case law interprets Title IX to include gender identity and sex stereotyping, though not sexual orientation. The Equal Employment Opportunity Commission also recently ruled under

Title VII of the Civil Rights Act that discrimination on the basis of gender identity constitutes sex discrimination.<sup>9</sup>

## Community-based prevention programs

According to the National Prevention Strategy, “all Americans should have the opportunity to live long, healthy, independent, and productive lives, regardless of their ... sexual orientation or gender identity.” To support this goal the law created a \$15 billion Prevention and Public Health Fund to fund new public health initiatives such as the Community Transformation Grants program at the Centers for Disease Control and Prevention. In 2011, 61 communities and states received \$103 million to fight leading causes of illness and death for 120 million people, and several of these grantees included the gay and transgender population as a priority.<sup>10</sup> Another round of Community Transformation Grants will be awarded this fall.

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## Conclusion

As Secretary Sebelius noted at the first White House Conference on LGBT Health in February 2012:

*When this administration took office, the health care system wasn't working for a lot of Americans. But it was especially broken for LGBT Americans ... that wasn't right. All Americans, regardless of where they live or their age, sex, race, sexual orientation, or gender identity, have a basic right to get the care they need.<sup>11</sup>*

After more than two years of historic efforts to transform our “sick care” system into a true health care system that supports healthy lives, families, and communities, health reform continues to hold enormous promise for gay and transgender communities. We should all be rooting for a robust future for the health reform law—our health as a nation depends on it.

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## Endnotes

- 1 "Patient Protection and Affordable Care Act Cases," available at <http://www.supremecourt.gov/docket/PPACA.aspx> (last accessed June 2012).
- 2 In this column, the term "gay" is used as an umbrella term for people who identify as lesbian, gay, or bisexual.
- 3 Office of the Secretary, *Prepared Remarks for the National Coalition for LGBT Health* (Department of Health and Human Services, 2011), available at <http://www.hhs.gov/secretary/about/speeches/sp20111017.html>.
- 4 Office of Minority Health, *Plan for Health Data Collection on Lesbian, Gay, Bisexual and Transgender (LGBT) Populations* (Department of Health and Human Services, 2011), available at <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid=209>.
- 5 Crosby Burns and Jeff Krehely, "Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment" (Washington: Center for American Progress, 2011), available at [http://www.americanprogress.org/issues/2011/06/workplace\\_discrimination.html](http://www.americanprogress.org/issues/2011/06/workplace_discrimination.html).
- 6 The 10 states with the lowest eligibility levels for working parents (ranging between 17 percent and 39 percent of the federal poverty level, or between \$3,800 and \$8,700 in annual income for a family of four) are Arkansas, Alabama, Idaho, Indiana, Kansas, Louisiana, Missouri, Texas, Virginia, and West Virginia. Using 2010 Census data, the Movement Advancement Project estimates that these states are together home to 1.5 million LGBT people, and the Williams Institute found that many of these states are home to numerous lesbian couples of color with children. See Sabrina Tavernise, "Parenting by Gays More Common in the South, Census Shows," *New York Times*, January 18, 2011, available at <http://www.nytimes.com/2011/01/19/us/19gays.html?pagewanted=all>.
- 7 "Prevention and Wellness," available at <http://www.health-care.gov/prevention/index.html> (last accessed June 2012).
- 8 The Affordable Care Act also extends protections found in Title VI of the Civil Rights Act, which protects people from discrimination on the basis of race, color, and national origin.
- 9 Jeff Krehely and Crosby Burns, "Employment Opportunity Commission Ruling Protects Transgender Individuals From Workplace Discrimination," *ThinkProgress*, April 24, 2012, available at <http://thinkprogress.org/lgbt/2012/04/24/469806/eec-discrimination/>.
- 10 "Community Transformation Grants," available at <http://www.cdc.gov/communitytransformation/> (last accessed June 2012).
- 11 Office of the Secretary, *Prepared Remarks for White House Conference on LGBT Health* (Department of Health and Human Services, 2012), available at <http://www.hhs.gov/secretary/about/speeches/sp20120216.html>.