

Why Gay Marriage Is an Issue for Abuse Professionals

by Loree Cook-Daniels*

The first lesbian couple to marry in the United States was an old one: Phyllis Lyon, 79, and Del Martin, 83, had been together 51 years. Depending on your social beliefs, this marriage—and other gay and lesbian marriages—is something about which you probably feel either delight or horror. At any rate, it's not an issue that needs to be dealt with by those who address abuse of elders and adults with disabilities, right?

Wrong. Whether or not your clients can legally marry may have a significant impact on their vulnerability to abuse, neglect, and exploitation. This article will explore why that is, and what steps you can—and cannot—take to try to lessen the costs and vulnerabilities being unable to marry causes some abused elders and adults with disabilities.

How Many Clients Are Likely in a Gay/Lesbian Couple

Census 2000 allowed respondents to designate that they were the “husband/wife” or “unmarried partner” of someone of the same sex. The figures that resulted are assumed to be a major undercount, because many couples may not have felt comfortable with any of the terms the census form used or may not have wanted to tell the government they are lesbian or gay. Nevertheless, calculations indicate that, based on reported numbers only, 7.77% of all people aged 65 and over in San Francisco are in same-sex couples. In Manhattan, the percentage is 5.73. Riverside County, CA; Broward County, FL; Brooklyn, NY; Baltimore, MD; Polk County, FL; Palm Beach County, FL; Alameda County, CA; and Philadelphia County, PA, all had 4.40% or more of their elders indicate that they are part of a same-sex couple. Los Angeles County, CA has 3,410 gay or lesbian couples that include at least one member aged 65 and over; Cook County, IL, has 2,190 such self-declared elder couples. Census figures show that overall, more than one in 10 same-sex couples include a partner 65 or older, and nearly one in 10 are comprised of

two people aged 65 or older. An estimated 30% of all gay men and lesbians are coupled. (Bennett and Gates, *The Cost of Marriage Inequality to Gay, Lesbian, and Bisexual Seniors; A Human Rights Campaign Foundation Report* (2004).)

The census did not ask respondents to indicate if they were an adult with a disability, so comparable figures for the younger disabled population are not available.

Civil Unions, Civil Marriage, and the Defense of Marriage Act

Although several states and localities are currently granting civil unions or are issuing or expecting to issue civil marriage licenses to same-sex couples, these documents will not be equivalent to marriages entered into by heterosexual couples no matter what individual state supreme courts and legislatures ultimately decide. That is because under current federal law, the Defense of Marriage Act (DOMA), no state has to recognize—and the federal government will not recognize—such a union or marriage certificate issued by another state.

That means, on the federal level alone, same-sex couples are denied 1,138 benefits and responsibilities granted to heterosexual married couples. Many of these benefits can have a profound influence on the ability of lesbian or gay male couples to prevent or address abuse, neglect, and exploitation.

LGBT Elder and Disabled Adult Abuse

There have been no incidence or prevalence studies on how often lesbians and gay men are victimized by elder or disabled adult abuse. We do know that same-sex domestic violence rates are comparable with heterosexuals' rates. Absent any evidence that the elder or disabled adult abuse rate for lesbians and gay men would be lower than for equivalent populations, we must assume the rates are at least comparable. Some experts, however, believe the rates of abuse of lesbians and gay men may be even higher than for the general population due to the addition of prejudice-based abuse and a higher tendency to self-neglect to avoid risking contact with homophobic providers. (Cook-Daniels,

“Lesbian, Gay Male, Bisexual, and Transgendered Elders: Elder Abuse and Neglect Issues,” 9 J. of Elder Abuse and Neglect 2 (1997).)

Financial Options Are More Limited

Many of the most important benefits that flow from civil marriage are financial in nature, and they have more of an impact on older than younger adults due to retired persons' fixed income. Some of the larger benefits denied same-sex couples include:

- Social security benefits based on a current or divorced spouse's higher earning records;
- Social security benefits for survivors of a retiree or disabled worker (average annual benefit loss: \$5,528);
- Survivors' benefits on private pension plans;
- Tax exemption on retirement accounts willed to a surviving spouse;
- Tax exemption on inheritance of a jointly-owned home by a surviving spouse;
- Guarantee of the right of a spouse to live in their home when one partner qualifies for Medicaid-paid long-term care; and
- “Spousal exemption” of income for the partner of someone who qualifies for Medicaid-paid long-term care. (Bennett and Gates, 2004.)

Taken together—and including the lifelong costs of being taxed for “domestic partner” healthcare benefits (where available), being barred from filing income taxes as a married couple, being barred from receiving survivor benefits from programs compensating spouses for on-the-job deaths, and other financial benefits losses—financially lesbian and gay male couples and widow/ers may not have the financial resources and, therefore, choices a like-incomed heterosexual couple or widow/er would. For example, agreeing to move an abused or neglected same-sex spouse into a nursing home may result in the “community” spouse becoming homeless. Leaving an abusive same-sex spouse may be financially impossible for a lower-

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income partner because of the loss of access to the other's higher Social Security benefits.

Care Options Are More Limited

Moving a self-neglecting or at-risk same-sex couple to assisted living or a nursing home may be out of the question for reasons beyond financial means. Although married heterosexual couples are guaranteed the right to live together in such facilities, same-sex couples may be denied that right.

If one same-sex spouse is still working and the other needs additional care, the Family Medical Leave Act will not allow the working member leave for his or her caretaking duties. Even congregate meal programs discriminate: the younger spouse of a heterosexual elder is entitled to attend meal programs, but the younger spouse in a same-sex couple may be barred from attending, which could affect the older spouse's willingness to access the benefits of such programs.

Exploitation May Be Legally Sanctioned

Widow/ers of same-sex partners are at particular risk of being legally exploited by the family members of their deceased spouse. In addition to the possibility the widow/er may lose his or her house due to inability to pay the required estate taxes, houses can be lost as the result of

family members asserting they have a right to inherit a house and the same-sex spouse, as a legal stranger, does not. Guardianships may also be granted to exploitative family members over long-time spouses, due to the "legal stranger" presumption about same-sex partners.

Closeted couples and singles may also be more vulnerable to blackmail by both family members and paid caregivers if the couple or single does not want knowledge of their homosexuality to be spread to others. Although this problem is cultural rather than legal, the negative ramifications of homophobia might be lessened if gay marriages became legal and accepted.

Addressing the Legal and Financial Limitations of Same-Sex Couples and Widow/ers

One of the reasons some gay activists are pushing so hard for the legalization of gay marriage is that much of the discrimination same-sex couples experience cannot be remedied by anything short of amending those 1,138 federal laws to cover domestic partnerships as well as married spouses. There is no possible "work-around" technique to gain same-sex partners access to their higher-earning spouse's Social Security benefits, for instance.

There are methods for ameliorating some discrimination effects, however. Here are four:

1. With careful advance planning, it may be possible to arrange to transfer home ownership to the "community-dwelling" spouse before a nursing home-residing spouse qualifies for Medicaid. Same-sex couples will need to be warned of the possible ramifications of qualifying for Medicaid, and assisted in finding a knowledgeable, non-prejudiced lawyer to help with the necessary legal documents.
2. Carefully-drawn wills help (although are not always upheld) in securing a widow/er's assets. Here, too, same-sex couples may need to be educated about the potential risks and assisted in drawing up the needed legal documents.
3. In all circumstances, advocates can help same-sex couples secure basic, respectful treatment. Advocates can negotiate with long-term care facility administrators to ensure that a same-sex couple can continue to live together as their needs increase, as one example.
4. On a long-term basis, advocates can help push for same-sex marriage, or at least for changes in the laws to allow long-term, committed partners more access to the public benefits that permit and assist families to take care of each other when one member grows old or becomes disabled. ■