

## **Chapter 10**

# **Equipping California Long-Term Care Ombudsman Representatives for Effective Advocacy: A Basic Curriculum**

**CULTURAL COMPETENCY and SENSITIVITY in ISSUES  
RELATING to the UNDERSERVED AGING LESBIAN, GAY,  
BISEXUAL, and TRANSGENDER COMMUNITY**

Curriculum Resource Material for  
Local Long-Term Care Ombudsman Programs

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## I. INTRODUCTION

This chapter discusses issues encountered by lesbian, gay, bisexual, and transgender (LGBT) seniors<sup>1</sup> and provides information to enable long-term care (LTC) Ombudsman representatives to provide competent and sensitive services to LGBT individuals. The California Legislature acknowledged the importance of training on this topic by requiring that Ombudsman representatives, administrators of an adult residential care facility, and administrators of a residential care facility for the elderly receive training that includes this content.<sup>2</sup> Ombudsman representatives can apply their knowledge and problem-solving skills to empower and support LGBT residents.

“In 2006, the California Legislature found that ‘lifelong experiences of marginalization place lesbian, gay, bisexual, and transgender (LGBT) seniors at high risk for isolation, poverty, homelessness, and premature institutionalization. Moreover, many LGBT seniors are members of multiple underrepresented groups, and as a result, are doubly marginalized. Due to these factors, many LGBT seniors avoid accessing elder programs and services, even when their health, safety, and security depend on it.’”<sup>3</sup>

The responsibilities of the State Ombudsman and Ombudsman representatives provide a good foundation to effectively serve LGBT seniors. State and federal laws, regulations, and policies require Ombudsman programs to ensure that long-term care residents have regular, timely, private, and unimpeded access to the services provided through the Office. In receiving, investigating, and resolving complaints made by, or on behalf of, residents, Ombudsman representatives are resident-directed. The identity of a complainant or resident is not disclosed unless consent has been obtained or a court orders the disclosure.<sup>4</sup>

The information in this chapter is intended to build on your knowledge base and to enhance your skills to increase your effectiveness in serving LGBT seniors. Some of the content may affirm what you already know and do. There may be other information or ideas that are new and that you can incorporate in your practice or in talking with other people. This chapter is not a comprehensive guide to understanding and serving LGBT seniors. It provides foundational information and tips for Ombudsman representatives.

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<sup>1</sup> “Seniors” is used to mirror the California statutory language and other research documents regarding LGBT individuals receiving long-term care services. The Ombudsman program also serves younger individuals, some of whom are likely LGBT. The focus of this chapter is the experiences of LGBT individuals who are currently seniors.

<sup>2</sup> AB 663 (Chapter 675), Welfare and Institutions Code, Section 3. Section 9719(a)(1)(B).

<sup>3</sup> SB 219 (Weiner, Chapter 483, Statutes of 2017), Long-term care facilities: rights of residents. Section 1(a). California Legislative Information. 10/05/2017. [SB-219](#)

<sup>4</sup> There are provisions for Ombudsman action when an individual cannot give consent. Refer to Office of the State Long-Term Care Ombudsman (OSLTCO) policies and forms, the federal Older Americans Act, and the Long-Term Care Ombudsman Program (LTCOP) Rule for more information.

## II. LESBIAN, GAY, BISEXUAL, AND TRANSGENDER INDIVIDUALS (LGBT)

### Population

Current estimates are that nine million Americans identify as LGBT. This is more than 3.5 percent of the population of the United States, roughly the population of New Jersey.<sup>5</sup> Data sources generally acknowledge that the estimates based on self-reports are likely lower than the actual number due to the continued reluctance of LGBT individuals to be open in their responses.

### Definitions

Some basic definitions are listed to provide a common understanding regarding the meaning of the terms used in this chapter.<sup>6</sup> You may see or hear additional terminology or acronyms with the letters in a different order in other settings. Language sometimes changes over time and individuals may have their own preferences regarding what term to use. For example, much of the current information uses the term *LGBT seniors*. Over the years, other terms have been used commonly such as *older adults*, *aged*, *senior citizens*, or *the elderly*. Individuals who are 65 or older have very different preferences regarding what term to use to describe their cohort group.

**Bisexual** means an individual who is physically, romantically, and/or emotionally attracted to both men and women. *Bisexual* does not suggest having equal sexual experience with both men and women.

**Gay** means anyone, but mainly men, who has primary physical, romantic, and/or emotional attraction to someone of the same sex. Many gay people prefer this term over *homosexual*, which retains negative connotations.

**Gender Expression** means the way a person outwardly expresses their gender identity and/or role: how they dress, walk, wear their hair, talk, etc. Typically transgender people seek to make their gender expression match their gender identity, rather than their sex assigned at birth.

**Gender Identity** means a person's identity based on the individual's stated gender identity, without regard to whether the self-identified gender accords with the individual's physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex as it appears in medical records, and without regard to any contrary statement by any other person, including a family member, conservator, or legal representative.

The California LGBT Long-Term Care Facility Residents' Bill of Rights (LGBT Residents' Bill of Rights) includes another provision in this definition: *An individual who lacks the present ability to communicate his or her gender identity shall retain the gender identity most recently expressed by that individual.*

<sup>5</sup> Gates, Gary J. *New Research Answers Question: How many LGBT People are there in the United States*. Williams Institute for Sexual Orientation Law, and Public Policy. April 7, 2011. [New Research Report Info](#)

<sup>6</sup> Refer to the *Glossary* in *A Practical Guide to Collecting Data on Sexual Orientation and Gender Identity* for a more comprehensive list. pp. 26 – 27. National Resource Center on LGBT Aging. [Link to A Practical Guide](#) The definitions included in this section are from the *Glossary* or from California Health and Safety Code §1439.50.

**Gender-nonconforming** means a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act.

**Heterosexual** means someone whose primary physical, romantic, and/or emotional attraction is to people of the opposite sex; also known as *straight*.

**Lesbian** means a woman whose primary physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as gay. Many lesbians view *homosexual* as a derogatory term. While younger women may use the terms *dyke* or *queer*, these terms are generally considered offensive to older people.

**Transgender** means a person whose gender identity differs from the person's assigned or presumed sex at birth.

**Transition** means to undergo a process by which a person changes physical sex characteristics or gender expression to match the person's inner sense of being male or female. This process may include, among other things, a name change, a change in preferred pronouns, and a change in social gender expression, as indicated by hairstyle, clothing, and restroom use. Transition may or may not include hormone use and surgery.

## Life Experiences and Long-Term Care

According to *Inclusive Questions for Older Adults*<sup>7</sup>, “The vast majority of LGBT older adults have lived through discrimination, social stigma, and the effects of prejudice both past and present, including a history of being labeled criminals, sinners, and mentally ill. For some, this fear and social stigma has disrupted their lives, their connections with their families of origin, their lifetime earnings and their opportunities to save for retirement. It has also made many of them apprehensive of health care professionals and other service providers.” LGBT individuals may not have the same degree of support from children and other family members as do non-LGBT individuals. LGBT individuals may rely more on nursing homes and other types of facilities to provide care than do individuals with more informal supports available.

*Stories from the Field*<sup>8</sup> contains the results of a 2010 survey seeking to better understand the experiences of LGBT older adults in long-term care settings. Almost 800 individuals completed the survey, with 284 identifying themselves as LGBT older adults and 485 identifying themselves as family members or friends, social service providers, including Ombudsman representatives, and others. People responding lived in 44 states plus the District of Columbia. California was the state with the largest number of respondents.

<sup>7</sup> National Resource Center on LGBT Aging. *Inclusive Questions for Older Adults, A Practical Guide to Collecting Data on Sexual Orientation and Gender Identity*. Revised 2016. p. 4. [Inclusive Questions Guide](#)

<sup>8</sup> *Stories from the Field, LGBT Older Adults in Long-Term Care Facilities*. Justice in Aging. 2010, updated and re-released in June 2015. The information and quotes in this section that relate to the survey and responses are from this reference. <http://www.justiceinaging.org.customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-the-Field.pdf>

The responses to a few of the questions on the survey provide some perspective on potential or actual issues in long-term care facilities, e.g., nursing homes, assisted living facilities or other long-term care facilities.

	LGBT Adults	Non-LGBT Adults
LGBT older adults can be open with staff about his/her sexual orientation and/or gender identity.	Yes: 22%	Yes: 16%

When the respondents were asked if they, a loved one, or a client had ever experienced specific types of mistreatment due to their actual or perceived sexual orientation and/or gender identity, 43 percent reported mistreatment. The five types of mistreatment most frequently reported were:

- Verbal or physical harassment from other residents;
- Refused admission or re-admission, attempted or abrupt discharge;
- Verbal or physical harassment from staff;
- Staff refusing to accept medical power of attorney from resident's spouse or partner; and
- Restriction of visitors.

Some quotes from the survey respondents provide insight regarding their experiences.

"A gay couple moved into my mother's facility. The residents kept talking about: 'Which one is the man and which one is the woman?' They moved out in a couple of months." Frances C., Pima, AZ

"Only a few residents have been out in the nursing homes where I have worked, and I have worked in nursing homes for more than 25 years. For those perceived as LGBT there are comments, whispers and gossip about the residents amongst staff and other residents." Mary Blanchett, Licensed Nursing Home Administrator and President of Mary Blanchett & Associates Inc., Brooklyn, NY

"My lesbian friend, whose given name is 'Hazel,' has gone by the name 'Rusty' her entire adult life (She is in her 80s). The staff in the skilled nursing facility insist on calling her 'Hazel.' Mentally, she is very astute, but it is rare that other residents or staff interact or make conversation with her. I feel that she has been excluded or isolated often. My friend has been transferred from place to place several times." Eddie W.<sup>7</sup>

*Stories from the Field* and other studies and articles illuminate issues that may not be readily apparent to non-LGBT individuals. Historical discrimination and personal experiences may contribute to a reluctance to be open with caregivers and others when LGBT individuals need long-term care services. Fear and mistrust can affect daily choices, lead to hiding one's preferences, and limit having a care plan that supports one's quality of care and quality of life.

### III. TIPS FOR OMBUDSMAN REPRESENTATIVES

“[My husband and I] have no children and are estranged from our families because we are gay. I worry about entering an assisted living facility because I’ve heard about LGBT elders being abused by homophobic staff. I worry that we are totally on our own.”<sup>9</sup>

*Peter, FL*

Peter’s statement illustrates the lack of family supports and concerns regarding living in a long-term care facility that are shared by many LGBT individuals. Ombudsman representatives can assist residents in exercising their rights, addressing care issues, and living in a way that supports their quality of life. When fears are expressed, you can provide information to help allay them and offer assistance if needed.

#### Tips for Working with LGBT Individuals<sup>10</sup>

Ombudsman representatives are advocates for residents, experts in residents’ rights, educators, and excellent communicators and listeners. You may wonder why you need additional information and possibly some different terminology in order to work with LGBT individuals. In the list of tips, you will find some values and skills that are familiar. You may need to make a few tweaks in your approach. As you read this list, pause and reflect on how you currently interact with residents and what, if anything, you want to change to better serve all residents. Incorporating these tips into your communication will assist LGBT individuals in viewing you as someone who can be trusted, who demonstrates respect and openness.

As always, if you encounter a situation where you are unable to provide effective advocacy, you must talk to your program coordinator. In some cases it may be necessary to recuse yourself from a case.

**Check your assumptions.**

Treating everyone the same may impede communication with LGBT seniors. Doing so often discounts the particular challenges that LGBT older adults encounter and have lived through. Treating everyone the same often translates into treating everyone as heterosexual and non-transgender.

**Remember that sexual orientation and gender identity are only two aspects of an individual.**

There are many other life experiences and aspects of an individual. Get to know the person and how you may assist them as an Ombudsman representative.

<sup>9</sup> *LGBT Elders Send Powerful Message to Federal Administration for Community Living*. Infographic. 10/20/2016. SAGEUSA.org. [Infographic](#)

<sup>10</sup> The information in this section is adapted from the following sources. *Practical Suggestions for Working with LGBT Elders*, Lavender Seniors of the East Bay, [Suggestions](#); *Inclusive Questions for Older Adults: A Practical Guide to Collecting Data on Sexual Orientation and Gender Identity*. 2016. p. 20. National Resource Center on LGBT Aging. [Collecting Data](#); *Building Respect for LGBT Older Adults – Module 3*. National Resource Center on LGBT Aging, [Building Respect Training](#); *Advocating for LGBT Long-Term Care Consumers: Resources for Long-Term Care Ombudsmen*. Hilary Meyer’s PowerPoint presentation. National Long-Term Care Ombudsman Resource Center webinar presentation. 2011. [H Meyer Presentation 2011](#).

Avoid focusing on one or two aspects of who they are and letting that define how you think of them.

- **Let the individual tell you about themselves and their family and be alert for any assumptions you may have.**

Do not assume heterosexuality or gender identity even when you know the individual is in a relationship with someone of the opposite sex, is married, or has children or grandchildren. Many LGBT seniors suffer a profound sense of isolation from years of having protected themselves from harassment and discrimination. Some “return to the closet” due to fears that discrimination may hinder getting their needs met.

Avoid questions or statements that assume relationship status, e.g., *Are you married?* or *Tell me about your wife/husband.* Instead, ask open-ended questions like, *Who are the important people in your life?* or *Who is family to you?*

If a senior identifies as LGBT, do not assume the person has not had previous relationships/marriages with someone of another gender. Do not assume the individual does not have children or grandchildren.

- **Use gender neutral language.**  
Avoid making assumptions about a resident’s gender or the gender of a senior’s partner. Utilize inclusive terms such as *partner*, *spouse*, and *significant other*. Use the individual’s name when referring to the person unless they have told you what pronoun they want you to use.
- **Respect the gender that transgender individuals consider themselves to be by using the gender-correct pronouns.**  
Ask the individual what pronoun they prefer. Such questions show care, interest, and respect. Use their preferred name or pronoun.
- **Respect the privacy of individuals who may be LGBT.**  
Ombudsman representatives respect the privacy of all residents. With an individual who is LGBT, you may have to accept only vague references from them about their personal lives. Do not expect total disclosure from them about their sexual orientation or gender identity. Do not probe unless you need information that is essential to resolving a concern that they have brought to you.
- **Explain and emphasize your policy on confidentiality.**  
You may do this routinely in your work as an Ombudsman representative. Knowing the Ombudsman program’s policy on confidentiality is very important to establish trust with someone who is LGBT and who may not be out to everyone in the facility or within their sphere of relationships. If you are working on a case, be very careful to not only obtain permission to reveal an individual’s identity, but also verify that you know how that individual wants you to refer to them (name, pronoun to use) when talking with others, even with facility staff or other residents.



#### **IV. KEY RESOURCES FOR ADVOCACY**

Two primary resources to support your advocacy are included in this section, *California Health and Safety Code, LGBT Long-Term Care Facility Residents' Bill of Rights* (LGBT Residents' Bill of Rights) and *Residents' Rights and the LGBT Community: Know YOUR Rights as a Nursing Home Resident*. Additional primary resources are included in an annotated list. Refer to these to learn more about working with LGBT individuals. Some of the resources could be used for discussions or for training with facility staff, family or resident councils, or others.

#### **California LGBT Residents' Bill of Rights**

In addition to the federal residents' rights for nursing home residents and State personal rights for residents of residential care facilities for the elderly, California has included an LGBT Residents' Bill of Rights in the State Health and Safety Code.<sup>11</sup> The Bill of Rights covers residents in all long-term care facilities. Refer to the Health and Safety Code for the complete text. The list that follows *does not* contain all the definitions, language, requirements, and information regarding violations that you may need for your advocacy. Remember to use the other tools you have learned about, e.g., the federal *Requirements of Participation* and the *CMS Guidance to Surveyors*, in working on behalf of LGBT residents.

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<sup>11</sup> Division 2 Licensing Provisions, Chapter 2.45, Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Residents' Bill of Rights [1439.50 – 1439.54]. [LGBT Bill of Rights](#) and [Residential care facility](#)

<b>LGBT RESIDENTS' BILL OF RIGHTS</b>	
<b>California Health Safety Code §1439.50 – 1439.54</b>	
<b>§1439.51 (a)</b>	It is unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status:
(1)	Deny admission to a long-term care facility, transfer or refuse to transfer a resident within a facility or to another facility, or discharge or evict a resident from a facility.
(2)	Deny a request by residents to share a room.
(3)	Where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request.
(4)	Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender-nonconforming. Harassment includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom available to other persons of the same gender identity.
(5)	Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns.
(6)	Deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for any other resident.
(7)	Restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner. This section does not preclude a facility from banning or restricting sexual relations, as long as the ban or restriction is applied uniformly and in a nondiscriminatory manner.
(8)	Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care in a manner that, to a similarly situated reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort.
<b>§1439.51 (b)</b>	This section shall not apply to the extent that it is incompatible with any professionally reasonable clinical judgment.
<b>§1439.51 (c)</b>	Each facility shall post the following notice alongside its current nondiscrimination policy in all places and on all materials where that policy is posted: <p>"[Name of facility] does not discriminate and does not permit discrimination, including, but not limited to, bullying, abuse, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, or HIV status, or based on association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, or HIV status. You may file a complaint with the Office of the State Long-Term Care Ombudsman [provide contact information] if you believe that you have experienced this kind of discrimination."</p>
<b>§1439.53 (a)</b>	Long-term care facilities shall protect personally identifiable information regarding residents' sexual orientation, whether a resident is transgender, a resident's transition history, and HIV status from unauthorized disclosure.



## Residents' Rights and the LGBT Community: Know YOUR Rights as a Nursing Home Resident

The federal 1987 Nursing Home Reform Law requires nursing homes to “protect and promote the rights of each resident” emphasizing individual dignity and self-determination in the provision of long-term care. Every nursing home accepting Medicare and/or Medicaid must meet federal requirements, including those regarding residents’ rights.

### Lesbian, Gay, Bisexual or Transgender (LGBT) Older Adults and Long-Term Care

Current estimates state that 9 million Americans identify as lesbian, gay, bisexual or transgender (LGBT).<sup>1</sup> One study found that 27% of LGBT baby boomers had significant concerns about discrimination as they age and there are reports that LGBT older adults encounter violations of their rights when seeking long-term care services and supports.<sup>2</sup> Incidents of abuse are often unreported or unidentified; however, a majority of individuals responding to a recent survey (578 of the 649 respondents or 89%) felt that staff would discriminate against an LGBT elder who was out of the closet.<sup>3</sup> Additionally, negative treatment, including verbal and physical harassment, by other residents was the most commonly reported problem by respondents in this study.<sup>4</sup>

Two friends of mine, Vera and Zayda, had been together for 58 years. When Vera’s Alzheimer’s became too much, Zayda moved her to an assisted living facility. Zayda could barely trust family or neighbors with the truth, let alone strangers, so she and Vera became “sisters.” Much later, after Vera’s death, Zayda needed to move into an assisted living facility herself. She had many, many photos of the love of her life, but dared not display them in her new home. The other residents would talk about husbands, children and grandchildren, but she felt too vulnerable to tell the truth. Zayda was in hiding and terribly isolated. —Nina L., Carlsbad, CA (*LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*. [www.lgbtlongtermcare.org](http://www.lgbtlongtermcare.org))

### KNOW Your Rights<sup>5</sup>

Individuals living in nursing homes have the same rights to be free from discrimination and harassment as individuals living in the larger community. In addition, they have rights and protections provided by federal nursing home regulations and state and federal anti-discrimination provisions. The rights of all residents should be honored and respected, regardless of sexual orientation or gender identity or expression. Understanding your rights, learning about ways to solve problems, and knowing how to get help if issues arise is the first step in ensuring quality care. The federal nursing home regulations provide the following resident rights and facility requirements that may be of particular importance to lesbian, gay, bisexual or transgender individuals living in a nursing home. State nursing home regulations and various anti-discrimination laws may provide additional protections (see “Resources” section for link to federal nursing home regulations):<sup>6</sup>

<sup>1</sup> Gates, G. (2011) *How many people are lesbian, gay, bisexual, and transgender?* Williams Institute: UCLA School of Law. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>

<sup>2</sup> MetLife Mature Market Institute, Lesbian and Gay Aging Issues Network (ASA), & Zogby International. (2006). *Out and Aging: The MetLife Study of Lesbian and Gay Baby Boomers*. Metlife. <http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-out-aging-lesbian-gayretirement.pdf>

<sup>3</sup> National Senior Citizens Law Center in collaboration with Lambda Legal, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Task Force and Services & Advocacy for GLBT Elders (SAGE). *LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*. April 2011. <http://www.lgbtagingcenter.org/resources/resource.cfm?r=54>

<sup>4</sup> *LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*, loc. cit.

<sup>5</sup> For more fact sheets and additional resources regarding residents’ rights and advocating for quality long-term care visit the National Consumer Voice for Quality Long-Term Care (Consumer Voice) website [www.theconsumervoicere.org](http://www.theconsumervoicere.org).

<sup>6</sup> See 42 CFR 483.10 for complete list of federal nursing home residents’ rights <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=e5d3af40a300a1dbbea73a7392115694&rgn=div8&view=text&node=42:5.0.1.1.2.2.7.3&idno=42>.

**Right to be FREE from ABUSE**

All residents have the right to be free from abuse (by any individual - including other residents) and facilities must develop and implement policies and procedures that prohibit mistreatment of residents and investigate and report allegations of abuse.

Resident mistreatment includes all types of abuse; such as verbal, sexual, mental and physical abuse, neglect and financial exploitation. For example, facility staff cannot refuse to provide care due to a resident's sexual orientation nor can staff harass a resident due to his/her gender identity.

**Right to PRIVACY**

Residents have the right to private and unrestricted communication with anyone they choose (e.g. during in-person visits and through letters, telephone and electronic communication) and privacy regarding their medical, personal and financial affairs. Residents also have the right to privacy regarding their bodies, and all care must be given in a manner that maximizes that privacy.

**Right to Receive VISITORS**

Residents have the right to receive visitors of their choosing. According to the federal government, "residents must be notified of their rights to have visitors on a 24-hour basis, who could include, but are not limited to, spouses (including same-sex spouses), domestic partners (including same-sex domestic partners), other family members, or friends."<sup>18</sup>

**Right to Participate in ACTIVITIES**

Residents have the right to participate in (or choose not to participate in) social, religious, and community activities both inside and outside of the facility. For example, you have the right to participate in and promote an event, training or resource regarding LGBT equality (e.g. PRIDE parade, PFLAG support group meeting) without fear of discrimination or abuse.

**Right to be treated with RESPECT**

All residents have the right to be treated with dignity, respect and consideration and have the right to exercise their choice and self-determination. For example, all residents have the right to be addressed how they want to be addressed (e.g. using a resident's preferred pronoun) and the right to be clothed and groomed consistent with their gender identity.

**Right to PARTICIPATE in YOUR CARE**

Residents have the right to be informed about care and treatment, participate in their own assessment and care planning and make decisions regarding their treatment, including health care choices related to gender transition. Residents also have the right to designate a legal surrogate (or, decision-maker) to act on their behalf. State laws, such as health care power of attorney and guardianship laws, govern how someone (including same-sex partners or spouses or other family of choice) can make decisions on your behalf.

**Right to be FULLY INFORMED**

Facilities must inform residents of any changes in services, changes in care or treatment, what is covered by Medicare and Medicaid or other health care insurance and of a change in roommate or room. Facilities must provide notice before a change in roommate and be as "accommodating as possible" by considering each resident's preferences.<sup>19</sup> In regards to benefits, the federal government states that Medicare Advantage enrollees are entitled to equal access to services in the same skilled nursing facility their spouse resides in, regardless of sexual orientation. Specifically stating that, "this guarantee of coverage applies equally to couples who are in a legally recognized same-sex marriage, regardless of where they live."<sup>20</sup>

<sup>18</sup> Department of Health and Human Services. Centers for Medicare & Medicaid Services (CMS). Center for Medicaid, CHIP and Survey & Certification Group. Reminder: Access and Visitation Rights in Long-Term Care (LTC) Facilities. S&C 13-42-NH. June 28, 2013.

<sup>19</sup> Department of Health and Human Services. Centers for Medicare & Medicaid Services (CMS). State Operations Manual. Appendix PP-Guidance for Surveyors for Long-Term Care Facilities. [http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_pp\\_guidelines\\_ltc.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf)

<sup>20</sup> U.S. Department of Health and Human Services. Press Release. August 29, 2013. <http://www.hhs.gov/news/press/2013pres/08/20130829a.html>

**Right to CHOICE**

Residents have the right to make their own choices, including what to wear, how to express themselves and their daily routine. Residents also have the right to retain and use personal items (e.g. some furnishings, pictures). Additionally, residents have the right to room with a person of their choice, including same-sex spouses or partners, if they live in the same facility and both consent to the arrangement.

**Right to REMAIN In the HOME**

A nursing home cannot transfer or discharge a resident unless one (or more) of the permissible reasons for transfer or discharge apply. Residents cannot be transferred or discharged due to their sexual orientation or gender identity. (See 42 CFR 483.12 for Admission, transfer and discharge rights, link to federal regulations in “Resources” section.

**Advocating for YOUR Rights**

You have the right to voice concerns with the staff without fear of reprisal and they must try to resolve grievances promptly. Nursing home staff are required to protect all residents from abuse and report and investigate allegations of abuse. Also, residents have the right to file a complaint regarding abuse, neglect, exploitation or non-compliance with the state licensing and certification agency. There are resources available to support you and agencies responsible for investigating complaints and allegations of abuse.

To locate resources in your state, including the agencies mentioned below, you can contact **Eldercare Locator**. Eldercare Locator is a national public service to help older adults and caregivers connect with local aging and disability services including the Long-Term Care Ombudsman Program, Adult Protective Services and your state licensing and certification agency. You can reach the Eldercare Locator by calling **1-800-677-1116** or visiting [www.eldercare.gov](http://www.eldercare.gov).

You have several options in addressing your concerns and you can use these at any time depending on your comfort level with working with the facility staff or the type of concern and outcome you want:

- Share your concerns with the **facility administrator, social worker** or another **staff person**. Inquire about the facility policy for grievances and use it, but know that you are not limited to their grievance policy. Document your conversations and keep a written record of your complaint. If necessary, ask for a care plan meeting to discuss your concerns.
- Contact your **Long-Term Care Ombudsman (LTCO) Program**. Ombudsmen are advocates for residents in long-term care facilities and are trained to resolve complaints with you and on your behalf. For additional information about the ombudsman program and to locate your LTCO program, visit [www.ltcombudsman.org/ombudsman](http://www.ltcombudsman.org/ombudsman). Contact information for your ombudsman program should also be posted in your facility.
- Contact your **state licensing and certification agency**. Each state has an agency responsible for the licensing, certification and regulation of long-term care facilities and investigations of complaints. To locate your state licensing and certification agency visit [www.ltcombudsman.org/ombudsman](http://www.ltcombudsman.org/ombudsman).
- Contact **Adult Protective Services (APS)**. APS investigates reports of abuse, neglect and exploitation of elders and, in many states, individuals with disabilities. Every state has APS services, but the services vary by state. To locate APS services in your area, visit [www.napsa.now.org/get-help/how-aps-helps/](http://www.napsa.now.org/get-help/how-aps-helps/).
- Abuse is a crime. If you are a victim of abuse in addition to contacting the investigating agencies contact your **local law enforcement agency**.
- Discrimination against LGBT nursing home residents is illegal. Contact the **Lambda Legal Help Desk** for information and lawyer referrals at 1-866-542-8336 or [www.lambdalegal.org](http://www.lambdalegal.org).

## **Long-Term Care Information, Resources and Advocacy**

**National Consumer Voice for Quality Long-Term Care (Consumer Voice)** The Consumer Voice is the leading national voice representing consumers in issues related to long-term care, helping to ensure that consumers are empowered to advocate for themselves and provides information and tools for consumers, families, caregivers, advocates and ombudsmen to help ensure quality care for the individual.

[www.theconsumervoic.org](http://www.theconsumervoic.org) 202-332-2275

**National Long-Term Care Ombudsman Resource Center (NORC)** The National Long-Term Care Ombudsman Resource Center provides support, technical assistance and training to the 53 State Long-Term Care Ombudsman Programs and their statewide networks of almost 600 regional (local) programs.

[www.ltombudsman.org](http://www.ltombudsman.org) 202-332-2275

## **LGBT Aging Resources and Advocacy**

**National Resource Center on LGBT Aging** The National Resource Center on LGBT Aging is the country's first and only technical assistance resource center aimed at improving the quality of services and supports offered to lesbian, gay, bisexual and/or transgender older adults. <http://www.lgbtagingcenter.org> 212-741-2247

**Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE)** SAGE is a national organization that offers supportive services and consumer resources for LGBT older adults and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for aging providers and LGBT organizations, largely through its National Resource Center on LGBT Aging.

[www.sageusa.org](http://www.sageusa.org) 212-741-2247

**Lambda Legal** Founded in 1973, Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

<http://www.lambdalegal.org/> 212-809-8585

## **National Coalition of Anti-Violence Programs' National LGBTQ Training and Technical Assistance Center**

The National Coalition of Anti-Violence Programs (NCAVP) coordinates the National Training and Technical Assistance (TTA) Center on Lesbian, Gay, Bisexual, Transgender, & Queer (LGBTQ) Cultural Competency. The NCAVP Training and Technical Assistance Center is available for direct service and advocacy organizations seeking answers, support, and strategies to become inclusive of and accessible to lesbian, gay, bisexual, transgender, and queer (LGBTQ) survivors. <http://avp.org/resources/training-center> 1-855-287-5428

**The National Gay and Lesbian Task Force** The mission of the National Gay and Lesbian Task Force is to build the power of the lesbian, gay, bisexual and transgender (LGBT) community from the ground up. We do this by training activists, organizing broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and by building the organizational capacity of our movement.

<http://www.thetaskforce.org/> 202-393-2241

**National Center for Transgender Equality** The National Center for Transgender Equality (NCTE) is a 501(c)3 social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. <http://transequality.org/> 202-903-0112



**FORGE: Transgender Aging Network (TAN)** FORGE was founded in 1994 in Milwaukee, Wisconsin, and provides peer support to everyone in the transgender community. <http://forge-forward.org/aging/>

**Nursing Home Regulations**

**Electronic Code of Federal Regulations-** Part 483 Requirements for States and Long Term Care Facilities (483.10 Residents' Rights)

[http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&tpl=/ecfrbrowse/Title42/42cfr483\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&tpl=/ecfrbrowse/Title42/42cfr483_main_02.tpl)

## Additional Resources

Numerous resources are included in the footnotes throughout this document. The resources in this section are primary resource centers for advocates. Each one contains many resources and new and updated resources are added periodically. There are documents, infographics, videos, and webinars to increase your knowledge base, enhance your advocacy, and use in providing information to others.

**National Long-Term Care Ombudsman Resource Center (NORC)** There is an Issue page containing many resources related to LGBT individuals, consumers, and Ombudsman program advocacy. The audio of some webinars for Ombudsmen and Ombudsman representatives and the presentation materials are also included on the issue page. <http://ltcombudsman.org/issues/lgbt-elders> (202-332-2275)

**National Resource Center on LGBT Aging** The National Resource Center on LGBT Aging is the country's first and only technical assistance resource center aimed at improving the quality of services and supports offered to lesbian, gay, bisexual and/or transgender older adults. <http://www.lgbtagingcenter.org> (212-741-2247)

*Building Respect for LGBT Older Adults: A series of six, 10-minute modules for training. A companion document, Building Respect for LGBT Older Adults, Supplemental Information for Staff in Non-Residential Service Settings, is useful for training purposes as a companion to the video modules.*

<https://www.lgbtagingcenter.org/training/buildingrespect/>

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**FORGE: Transgender Aging Network (TAN)** FORGE was founded in 1994 in Milwaukee, Wisconsin, and provides peer support to everyone in the transgender community. <http://forge-forward.org/aging/>

**Lavender Seniors of the East Bay** was founded in 1994 by a group of seniors concerned with a lack of services and legal protections for the “gay and grey.” The mission is to improve the quality of life of older LGBTQ residents of Alameda and Contra Costa counties. Lavender Seniors provides direct services, outreach, advocacy, and education. <http://lavenderseniors.org/> (510-736-5428)