

# Health Advocate

E-Newsletter of the National Health Law Program

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## The ACA and LGBT Health

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### Key Resources

[NHLP Op-Ed in the National Law Journal – Insurers Are Leaving Patients Priced Out](#)

[Center for American Progress – Moving the Needle: The Impact of the Affordable Care Act on LGBT Communities](#)

[New England Journal of Medicine – Using Drugs to Discriminate - Adverse Selection in the Insurance Marketplace](#)

[NHLP – Aetna Agrees to Make HIV Medications More Affordable After Complaint](#)

[Kaiser Family Foundation – Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S.](#)

[Center for American Progress – Open Doors for All: Sexual Orientation and Gender Identity Protections in Health Care](#)

**Coming in August  
Health Advocate:  
Benefits & Payment**

At Pride events across the country, the Lesbian, Gay, Bisexual, and Transgender (LGBT) community and our allies celebrated the Supreme Court's landmark decision in [Obergefell v. Hodges](#) recognizing the fundamental right to marriage equality. This hard-fought victory, after decades of struggle and sacrifice, leads many to ask: What is next for the LGBT movement?

In this month's *Health Advocate*, NHLP examines the issue of health care coverage and some of the important gains and unrealized goals for the LGBT community under the Affordable Care Act (ACA). These include new coverage opportunities for low-income populations, legal protections from discrimination, and requirements for data collection that create opportunities to better assess the health of LGBT populations. We also examine ACA outreach and implementation challenges and identify advocacy opportunities to help ensure that health reform benefits everyone.

### Increased Access to Care – Medicaid Expansion

The ACA greatly expands health care access, particularly for low-income and previously uninsured individuals. One of the ACA's key provisions expanded the Medicaid program to provide health coverage to all low income childless adults under age 65.

Medicaid expansion is particularly important for the LGBT community, which studies show is disproportionately living in poverty and uninsured.

- Unemployment and poverty are higher for LGBT individuals than for the general U.S. population—an estimated 14% of LGBT individuals earn less than \$10,000 per year, compared to 6% of the general population. (American Psychological Ass'n., [Lesbian, Gay, Bisexual, and Transgender Persons & Socioeconomic Status](#)).
- In a 2013 study, one out of every three LGBT individuals did not have health insurance. (Center for American Progress, [LGBT Communities and the Affordable Care Act: Findings from a National Survey](#) (Oct. 10, 2013)).

Prior to the ACA, eligibility for Medicaid was mostly limited to certain categories, such as low income pregnant women, children, parents, and persons with disabilities. Restrictive eligibility criteria shut out many other low-income and uninsured individuals who did not fall into one of these categories.

Even persons with significant health needs, such as HIV infection, often could not qualify for Medicaid until their disease progressed from HIV to a full AIDS diagnosis, which then qualified them under Medicaid's definition of disability. The irony is that access to treatment can keep people with HIV healthier longer, but people with HIV could not qualify for Medicaid until they became very ill.

The ACA's Medicaid expansion promised health coverage to an estimated [14.5 million](#) low income Americans nationwide. According to a [study](#) by the Center for American Progress, an estimated 795,000 newly eligible adults are LGBT.

However, in 2013 the Supreme Court ruled that states could decide whether to implement the ACA's Medicaid expansion. (See NHeLP, [The Supreme Court's ACA Decision & Its Implications for Medicaid](#) (July 1, 2012)). Despite generous federal reimbursement—initially 100% and then reducing but remaining at 90%—for the cost for services, some states, notably in the South and Mid-West, have thus far refused to implement the expansion, leaving an estimated 281,000 LGBT persons without any health coverage options at all. (See [New Coverage Options](#)).

States that have not expanded Medicaid (as of July 1, 2015)			
Alabama	Louisiana	Oklahoma	Virginia
Alaska	Maine	South Carolina	Wisconsin
Florida	Mississippi	South Dakota	Wyoming
Georgia	Missouri	Tennessee	
Idaho	Nebraska	Texas	
Kansas	North Carolina	Utah	

Many LGBT organizations are actively engaging with state-level coalitions of health care and patient advocacy organizations to encourage their governors and state legislatures to implement the Medicaid expansion. Visit [NHeLP's Medicaid Expansion Toolbox](#) for more information on state advocacy efforts and resources. To learn more about LGBT outreach and enrollment strategies for the new ACA healthcare options, visit [Out2Enroll](#).

### ACA Non-Discrimination Protections

The ACA contains important protections from discrimination that benefit everyone, including LGBT persons. The ACA prevents health plans from denying coverage due to a preexisting condition. The ACA further prohibits discrimination based on health status or medical condition, and it prevents insurers from imposing annual or lifetime limits on benefits.

The U.S. Department of Health and Human Services (HHS) issued regulations implementing the ACA's health care Marketplaces that prohibit health insurers from discriminating on the basis of a number of factors, including health status, gender identity, and sexual orientation.

In addition, the ACA's Section 1557 extends existing federal civil rights laws prohibiting discrimination on the basis of disability, gender, race, or age to the Marketplaces and the plans sold through those Marketplaces. These new protections provide an unprecedented opportunity to combat many forms of discrimination in health care settings, including those faced by LGBT individuals.

### *Combatting HIV discrimination*

The ACA provides important protections for persons living with HIV/AIDS by prohibiting health plans from discouraging enrollment by individuals with significant health needs. In May 2014, NHeLP and The AIDS Institute filed a [complaint](#) with the U.S. Department of Health and Human Services Office for Civil Rights (OCR), charging that four Florida health plans unlawfully discriminated against people living with HIV/AIDS by placing all HIV medications, including generics, on the highest cost-sharing tiers. This practice, known as adverse tiering, is designed to discourage people with HIV/AIDS from enrolling in those health plans, and is prohibited by the ACA.

As a result, three of the four insurers reached settlements with state regulators to lower patient costs for HIV medications. The fourth announced it would cap patients' monthly out-of-pocket costs to \$200 for HIV drugs nationwide. HHS issued [new regulations](#), effective in January 2016, warning health insurers that adverse tiering constitutes unlawful discrimination under the ACA. In addition, HHS is reviewing all 2016 health plan proposals for discriminatory prescription drug formularies and pricing structures. Plans with deficient or discriminatory benefit designs will not be approved for the 2016 Marketplace.

### *New protections for transgender persons*

A recent [federal court ruling](#) found the ACA's Section 1557 protection against gender-based discrimination extends to gender identity. A transgender man successfully sued a hospital in Minnesota for mistreatment and abuse from medical personnel. The court cited an [OCR opinion](#), "Section 1557's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity."

HHS also recently released [guidance](#) stating that insurers cannot limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity, or recorded gender. Thus, for all the preventive services required to be provided at no cost under the ACA, plans must provide coverage for the recommended preventive service without cost-sharing, regardless of sex assigned at birth, when a provider determines that a recommended preventive service is medically appropriate.

#### *Advocacy opportunities to monitor and enforce non-discrimination protections*

Advocates will have an opportunity to comment on proposed regulations implementing Section 1557 and support expanded protections for individuals based on sexual orientation and gender identity, among others. Although OCR and at least one federal court decided that 1557's protections extend to gender identity and sex stereotyping, advocates need to press for the adoption of formal regulations that specifically include these non-discrimination protections.

### **Health Disparities and Data Collection**

Lack of data on LGBT health and health care access seriously hampers efforts to address ongoing disparities and enrollment challenges. Most state and national health surveys do not ask questions regarding sexual orientation and gender identity. The ACA requires the federal government and states to collect and analyze data on race, ethnicity, sex, primary language, and disability status to address disparities in health care services and performance. However, it does not specifically mention sexual orientation or gender identity.

Nonetheless, HHS recently added LGBT health data to several federal initiatives designed to address health disparities, including the [Healthy People 2020](#), the [National Health Interview Survey](#), and the [National Healthcare Disparities Report](#). These nascent data collection efforts and analyses will help pave the way for future policy initiatives to eliminate the health disparities faced by LGBT communities.

The ACA's Marketplaces and state Medicaid agencies can collect data on sexual orientation and gender identity during the application and enrollment for health coverage. These data are keys for targeting outreach strategies to enroll hard-to-reach populations. Advocates can work with their state agencies, as well as researchers and academic institutions, to implement data collection that includes LGBT communities.

The Institute of Medicine provides information on designing and implementing research and data collection in its report—[The Health of Lesbian, Gay, Bisexual, and Transgender People Building a Foundation for Better Understanding](#).

## Conclusion

Forty-six years ago, the Stonewall Riots launched the modern movement for LGBT civil rights. However, that movement does not end with the victory of marriage equality. This year marks a new beginning for LGBT people whose future depends on ongoing activism, engagement, and support for a community struggling to overcome discrimination and marginalization that continues to imperil the lives of so many.

## About Us

The National Health Law Program protects and advances the health rights of low income and underserved individuals. NHeLP advocates, educates and litigates at the federal and state level.

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