

# **Maryland Domestic Partnerships**

**What this means for older LGBT  
individuals and couples?**

## Issue – No statewide registry

- Leaves LGBT couples to create their own affidavits
  - This can be confusing
  - They may not have the money to hire an attorney to make sure the affidavit is legally-sound
- If a couple does not create an affidavit on their own, they may not be recognized as DPs in the event of an emergency
  - If there was a registry, it wouldn't matter whether or not they had an affidavit because whoever they were dealing with would be legally obligated to recognize the DP.

# Issue – Lack of national uniformity in relationship recognition is confusing

- Some states have domestic partnerships, some have civil unions, some have reciprocal beneficiaries, some have “gay” marriages
  - To the elderly, this is very confusing
  - A domestic partnership in Maryland is much different than a domestic partnership in California.
  - Elderly LGBT folks might think they have the same rights as married people because of the term “domestic partnership” when really they only have a few rights.

## Issue – “Mutual interdependence” is a difficult standard to prove

- Some LGBT elderly people are not “out” to their families (children, grandchildren, siblings) so they may not have pooled their resources
  - May not have joint bank accounts, home ownership, etc.
- Due to age, may not be able to show joint responsibility for childcare
- Many elderly people have their children listed on their wills and powers of attorney and not their domestic partners, so cannot use these documents as proof of their domestic partnership

# Issue – Subjective policy is vulnerable to homophobic facilities and care providers

- Hospitals have the option of taking the patient's word about their DP or requesting proof
  - This leaves the door wide open for homophobia to play a role. A homophobic care provider can purposely request extensive documents that the couple may not have available.
  - Care provider can also straightforwardly refuse to honor the patient's domestic partnership since there is no statewide registry to prove the DP and since the care provider is under no legal obligation to honor the patient's verbal identification of their DP

## Issue – Advanced directive takes precedence over domestic partnership

- Because of homophobia, fear of stigma, or shame, some LGBT elderly people are not out to their family members.
  - They may have a child or grandchild listed as their health care agent and not their domestic partner
  - The health care agent gets to make all decisions even if the couple is able to prove a valid domestic partnership
  - Thus, a patient's final wishes may not be honored because the health care agent is not obligated to listen to the domestic partner

## Issue – Act is simply confusing!

- Because it is also available for heterosexual couples and is not exclusive to same-sex couples, some LGBT elderly folks may think it does not apply to them at all
- Calling it a domestic partnership may lead an LGBT couple to equate it with the domestic partnerships of other states, which offer many more rights
- The requirements vary and can be enforced arbitrarily depending on the facility
- Some elderly patients may not use the correct terminology and will call their domestic partner their “friend” or “girlfriend,” causing the facility to not recognize that the patient is actually identifying a statutorily-protected domestic partner

## Miscellaneous issues

- No Social Security or Medicaid benefits
- Even with a domestic partnership affidavit, LGBT caregivers are not eligible to take leave under the FMLA while caring for a sick partner
- LGBT veterans may falsely believe that they will lose their military benefits if they establish a domestic partnership and so they will not take advantage of the limited benefits this Act offers
- Fear of stigma, shame, or embarrassment may cause some LGBT elderly folks to not identify a domestic partner even though they have one
- Care providers and employees may harass, intimidate, and abuse an LGBT patient if the patient identifies a domestic partner

## **Bottom Line:**

Maryland's domestic partnerships are inadequate to meet the needs of elderly LGBT couples.

At minimum, a statewide registry is needed to ensure that homophobic and arbitrary policies do not adversely affect this vulnerable population during trying times when they most need protection.