

LEGAL AND PUBLIC POLICY ISSUES FOR TRANSGENDER ELDERS

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Alejandro is a 72 year old female-to-male transsexual (FTM). After suffering a number of serious health problems, Alejandro no longer felt safe living alone and moved into an assisted living facility. Within a few days of his arrival, some of the other residents discovered that Alejandro was transsexual and demanded that he be asked to leave. A month later, the facility informed him that his presence was upsetting to the other residents and that his tenancy was being terminated. Alejandro contacted several public agencies for assistance, but was told that discrimination against transgender people is not prohibited under federal, state or local law.

Lisa is a 60 year old male-to-female transsexual (MTF) who lost her career as a corporate manager when she transitioned at the age of 41. She has been unable to obtain any lawful employment since that time and cannot afford sex reassignment surgery. She has no permanent residence and is frequently homeless. On nights that she has nowhere else to stay, Lisa would like to be able to sleep in the local homeless women's shelter. She is unable to do so, however, because the shelter will not accept transsexual women who have not undergone genital surgery.

Mack is a 68 year old transgender person. Mack is biologically female and has never undergone any form of medical treatment, but considers himself to be male and lives his life as a man. When Mack suffered an incapacitating stroke, his adult sister was appointed to be his legal guardian. The sister placed Mack in a nursing home. She also insisted on dressing him in frilly female nightgowns and referring to him by a female name and female pronouns. When Mack recovered enough to make his wishes about clothing and pronouns known to the facility staff, the staff concluded that he was "confused." Mack became increasingly withdrawn and depressed. He no longer speaks or interacts with other residents.

As these stories show, transgender elders face unique and often extreme forms of discrimination. They are denied medical care, excluded from housing and social services, and despised simply for being who they are.

Housing and public accommodations discrimination. Laws protecting transgender elders are virtually non-existent. There is no federal law that prohibits discrimination against transgender individuals, and Minnesota and Rhode Island are currently the only states with such laws. Outside of these states and the approximately 50 cities and counties that have enacted local non-discrimination statutes, there is generally no established legal recourse for anti-transgender discrimination in employment, housing or public accommodations. As a result, homeless shelters, retirement communities, nursing homes, assisted living facilities, and other services for elderly people can and do discriminate against transgender elders with impunity. And despite a dramatic increase in the number of attorneys and legal organizations serving older Americans in recent years, very few are willing to represent transgender clients.

Medical discrimination. Although transgender people have existed throughout human history, the contemporary medical treatments that comprise sex reassignment, which are primarily hormone therapy and surgeries, have only existed for about forty years. Transsexual people have a gender identity – an internal sense of being a man or a woman – that differs from their anatomical sex. The resulting clash between one’s external anatomy and one’s internal sense of self is termed “gender dysphoria” or “gender identity disorder.” Despite being classified by the American Psychiatric Association as a mental disorder, transsexuality cannot be “cured” by therapy, and attempts to do so have caused profound harm. Although misguided and damaging efforts to “cure” transgender children still occur, transgender elders are more likely than younger transgender people to have experienced the most extreme forms of psychiatric abuse earlier in their lives, such as electroshock therapy, forced drugging, and aversion therapy. Those who have been subjected to those extreme forms of abuse may suffer from permanent physical and psychological damage, including tardive dyskinesia and other neurological impairments, immune deficiency, and/or severe depression.

There are also a significant number of transgender elders who wish to undergo sex reassignment but who are prevented from doing so because they cannot afford it. A transsexual person may come to terms with his or her identity at any age. From a medical perspective, there is no upper limit on the age at which a person may begin hormone therapy or undergo sex reassignment surgeries; in practice, individuals in their sixties and seventies have transitioned successfully. Currently, however, Medicare, the federally funded national health insurance program for seniors and people with disabilities, will not pay for sex reassignment. Services related to sex reassignment are also excluded from most state Medicaid programs, as well as from the overwhelming majority of private health insurance plans. Because of this discrimination, transgender people must pay for any medical services relating to transsexualism out of their own pockets, with the result that many are never able to obtain sex reassignment surgery. For transgender elders on a limited income, even paying for hormone therapy may be a severe hardship.

Because discrimination among health care providers is so pervasive, and because the consequences of disclosing one’s transgender status can be devastating, many transgender elders simply refuse to seek treatment, even for life-threatening conditions. In 1989, for example, Billy Tipton died of a bleeding ulcer for which he had refused to

seek any medical treatment. Tipton was a well known jazz musician who lived his life as a man and who was only discovered to have a female body after his death. At the time of his death, Tipton had not seen a doctor in more than fifty years.

Marriage Discrimination. Although many transgender people marry, the legality of those marriages is far from clear and has not, for the most part, been tested or clarified in the courts. As a result, transgender elders who are relying on marriage to secure basic partnership rights -- such as the right to make financial and healthcare decisions for the other person in the event that either becomes incapacitated, or the right to survivor's benefits in the event of death -- may find themselves completely stripped of all such rights if the legality of the marriage is questioned. In 2000, for example, an appellate court in Texas invalidated a seven year marriage between Christie Littleton, a transsexual woman, and her deceased husband, when Ms. Littleton attempted to bring a wrongful death suit seeking damages for her husband's death as a result of alleged medical malpractice. In 2002, the Kansas Supreme Court held that J'Noel Gardiner, a transsexual woman, was not entitled to inherit from her deceased husband because the court concluded that their marriage was invalid due to her transsexual status. In 2003, however, a trial court in Clearwater, Florida affirmed the validity of a marriage between Michael Kantaras, a transsexual man, and his now ex-wife Linda Kantaras.

Conclusion

Transgender elders are vulnerable to multiple forms of discrimination and generally have few legal, medical, or social resources. There is a great need for programs and initiatives specifically targeted at this group.