GLMA
GAY & LESBIAN MEDICAL ASSOCIATION

HUMAN RIGHTS CAMPAIGN FOUNDATION

HEALTHCARE EQUALITY INDEX

Creating a National Standard for Equal Treatment of Gay, Lesbian, Bisexual and Transgender Patients and Their Families

The Gay and Lesbian Medical Association works to ensure equality in healthcare for gay, lesbian, bisexual and transgender individuals and healthcare professionals. GLMA achieves its goals by using healthcare expertise in professional education, public policy work, patient education and referrals, and the promotion of research.

The Human Rights Campaign Foundation envisions an America where GLBT people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. The HRC Foundation engages in research, education, advocacy and outreach on such issues as equality at work, adoption and foster care, marriage, healthcare, aging, domestic partner benefits, safe schools, religion and general issues of social justice and equality.

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Letter from HRC Foundation President Joe Solmonese and GLMA Executive Director Joel Ginsberg

Dear Readers,

Do you feel safe being open with your doctor, nurse or physician assistant? If you're in a relationship, are you confident that you and your partner will be respected as a family when one of you is in the hospital? Do your healthcare providers understand the specific health issues facing gay, lesbian, bisexual and transgender individuals and families?

With this first annual edition of the Healthcare Equality Index, the Human Rights Campaign Foundation's Family Project and the Gay and Lesbian Medical Association are taking an important step toward answering those questions for GLBT healthcare consumers from coast to coast.

The Healthcare Equality Index is designed to obtain baseline knowledge about current hospital policies that are of concern to GLBT individuals and families and to promote compassionate and competent care for all patients.

By participating in this project, hospitals across the country are helping to provide a first-of-its-kind glimpse at the current state of the hospital industry and its relationship with GLBT people.

Specifically, the index addresses basic components of the healthcare experience that touch the lives of GLBT people, including non-discrimination and visitation policies, recognition of legal documents between same-sex partners (medical decision-making, guardianship, etc.), protection of GLBT hospital staff through fair employment policies and outreach to the GLBT community.

Invitations to participate in the online Healthcare Equality Index survey were sent to hospitals nationwide in October 2006. For this first year of the project, survey responses will remain confidential while the concept is being introduced to the healthcare industry and as we work to build participation in a safe environment. In the next round of surveying, beginning in October 2007, hospitals and other branches of the healthcare industry will be asked to provide answers which will be publicly released in the next HEI report. This information will also be used to build an online resource that consumers can use when they search for facilities to serve their families' healthcare needs.

By participating in this project, hospitals across the country are helping to provide a first-of-its-kind glimpse at the current state of the hospital industry and its relationship with GLBT people.

Moving forward, we will use this information to help define a "gold standard" for caring for GLBT patients, strengthening the state of the nation's healthcare by making it more responsive to the needs of all patients.

Sincerely,

Joel Ginsberg, J.D., M.B.A.
Executive Director, Gay and Lesbian Medical Association

Joe Solmonese
President, Human Rights Campaign Foundation

"You are not family. I cannot give you any information and you cannot go into the ICU."

These are words that you would never want to hear after rushing a loved one to the emergency room. But such words are an unfortunate fact of life for many gay, lesbian, bisexual and transgender people in the United States. Even couples who have been together for decades — raising children, maintaining homes and merging their lives in the many ways that families do — run the risk of being treated as total strangers at a time of crisis.

In early 2006, the Human Rights Campaign Foundation's Family Project and the Gay and Lesbian Medical Association teamed up to begin laying the groundwork for a new project — the Healthcare Equality Index — that would address a broad range of healthcare issues faced by the GLBT community. This new project also benefited from the work of the National Coalition for LGBT Health, of which both GLMA and HRC are members.

The goal of the Healthcare Equality Index is to create a baseline understanding of existing healthcare industry policies on issues of concern to the GLBT community as well as to measure improvement from year to year. Through this process, a national standard will emerge for equal treatment of GLBT patients and their families in place of the patchwork of state laws and differing hospital policies that they now face.

The release of this report marks the beginning of the next phase of the Healthcare Equality Index project, in which hospitals and other branches of the healthcare industry will be asked to address these issues by implementing fair, workable policies and ensuring that all employees realize that GLBT individuals and families are among their clients and patients. HRC and GLMA will serve as expert resources for healthcare administrators and will continue to educate the GLBT community about the legal steps available to protect themselves and their families.

Laying the Groundwork

Work on the first Healthcare Equality Index survey began with a wide-ranging discussion by a group of dedicated volunteers. Two advisory groups were established to provide overall guidance for this project. Members were chosen based on their expertise in the healthcare industry, GLBT community or both. These advisors helped develop a survey that would identify "gold standard" policies. They also reached out to the healthcare industry to promote its participation.

Invitations to participate in the project were extended to hospitals across the country beginning in October 2006. Letters with detailed instructions on how to access an online version of the HEI survey were sent to the chief executive officer or president of every hospital in the United States with 300 or more patient beds.

All hospitals, however, now and in the future, are welcome to participate in the project, regardless of size.

The first HEI survey focused on hospital policies in five areas:

- Patient non-discrimination;
- Visitation;
- Decision-making;
- Cultural competency training for staff; and
- Employment policies.

While the focus of the first HEI survey was on hospitals, the project will expand to include long-term care, assisted living, hospice, community health clinics and other branches of the healthcare industry.

In addition to this report, the project's website, at *www.hrc.org/hei*, will serve as a clearinghouse for existing policies that may be used as a guide for healthcare agencies with the hope that many will adopt and promote fair policies. Agencies will also be invited to share their positive policy developments with potential patients through a searchable online database.

Reading This Report

The responses to the first Healthcare Equality Index survey are presented here as aggregate statistics from the participants' responses to the first survey. These statistics are derived from the 30 surveys that were returned by either individual hospitals or healthcare organizations that responded on behalf of all of the facilities in their networks. Together, the results reflect the policies of 78 hospitals in 20 states and the District of Columbia. The names of the participants in this first survey are confidential, though individual hospitals and networks may choose to publicly discuss their participation as they wish. Future surveys will seek information from healthcare agencies for public release.

It should not be assumed that the "Yes" and "No" answers to the questions in this report translate into percentages that reflect the entire hospital industry in this country. It is evident that many hospitals want to have a "good score" on surveys, and although many have welcomed the concept of the HEI, they feel that they need to work on their policies before submitting a response to the survey. This desire is understandable, given that the HEI is a new project. The Human Rights Campaign Foundation and the Gay and Lesbian Medical Association fully expect that in each subsequent year, a greater number of hospitals nationwide will participate in the HEI survey as a routine measure of their performance — one of many such measures that exists for hospitals regarding a specific area of service delivery and cultural competence.

Therefore, these survey results can be seen as benchmarks indicating the number of hospitals or hospital networks that have reported having a particular policy. For instance, this year, the HEI found that 60 hospitals have written patient non-discrimination policies that include sexual orientation. Progress will be marked in coming years by an increase in this number, through policy changes and increased participation in the HEI survey.

Another perspective provided by this report is the disparity in policy coverage based on sexual orientation and gender identity and expression. While 60 hospitals reported patient non-discrimination policies that included sexual orientation, only 46 included gender identity and expression. This gap is indicative of an inequality in the healthcare industry that should be remedied.

Finally, the information reported by this project should not be seen as a condemnation or endorsement of any particular healthcare provider. This project is intended to promote an ongoing discussion about how providers can best serve and respect patients and their families. Many healthcare providers have been working toward GLBT-inclusive policies for years. This report will highlight the efforts of these trailblazers and call upon everyone involved to take action in support of equality.

SURVEY >> 2007 Healthcare Equality Index Survey

Question: Does your hospital have a non-discrimination policy or Patients' Bill of Rights that prohibits discrimination against patients on the basis of sexual orientation?

Responses:

Yes: **60** hospitals
No: **18** hospitals

Question: Does your hospital have a non-discrimination policy or Patients' Bill of Rights that prohibits discrimination against patients on the basis of gender identity?

Responses:

Yes: **46** hospitals
No: **32** hospitals

Public health advocates understand how important it is for patients to feel respected and secure in healthcare settings. A welcoming environment is a healthy environment. Hospitals often publicize their commitment to serving diverse communities with websites, inclusive language on hospital forms or welcoming posters in public areas proudly proclaiming their commitment to service without cultural barriers. Gay, lesbian, bisexual and transgender people should be included in these programs.

When patients are secure in the belief that they will not be discriminated against, they can focus their energies on getting better instead of worrying about what personal information they can safely share.

Hospitals across the country can rightly assume that they are serving GLBT patients. The 2000 Census of the United States found that GLBT people live in every part of our society — rural and urban, north and south, in every state and every congressional district (see Appendix A on page 25).[1] GLBT people truly are everywhere. The reported number of same-sex couples in the United States rose to nearly 770,000 in 2005, an increase from 600,000 in 2000, according to the U.S. Census Bureau.[2] The extent to which this population is "visible" relates to the comfort level that individuals have being "out" about their sexual orientation or gender identity.

Many GLBT people have become sensitized to the discrimination that is present in every aspect of our society, so they often look for clues to help them determine if they are in a "safe space." By creating welcoming environments for GLBT people, hospitals make these patients feel secure and respected. When patients are secure in the belief that they will not be discriminated against, they can focus their energies on getting better instead of worrying about what personal information they can safely share. This comfort level may make the difference between a patient deciding to seek medical treatment in a timely manner or avoiding a healthcare setting that he or she perceives to be unfriendly.

Transgender people, in particular, face some of the biggest healthcare obstacles. Some healthcare providers refuse to treat transgender patients or are insensitive to their physical and mental health needs and the pervasive discrimination and stigma they experience.

Tragically, in some reported cases, paramedics have stopped treating patients upon realizing that the patients were transgender.

Healthcare providers can take positive steps to promote the health of their GLBT patients by examining their practices, office climates, policies and staff training.

To avoid discrimination, many transgender people do not inform their healthcare providers that they are transgender — or they avoid seeing healthcare providers entirely. When providers are not fully informed of their patients' medical situations, accurate diagnosis and treatment can be compromised.

The HEI and GLMA websites (*www.hrc.org/hei* and *www.glma.org*) offer links to resources and expert information about working with transgender patients.

Intake Forms

Providing personal information on forms is a part of every patient's interactions with any healthcare organization. One of the easiest ways for an organization to create a welcoming and affirming environment for GLBT patients is to acknowledge them with inclusive intake forms.

Relationship Status

With few exceptions, standard forms fail to accommodate relationships outside the traditional definition of "marriage." If intake forms provide "married," "single" and "divorced" as the only options under "relationship status," they create an obstacle for same-sex couples — aside from the small percentage who live in Massachusetts, the only state that offers marriage equality for GLBT families.

Transgender Patients

Most healthcare forms also present obstacles for transgender patients. Gender identity and expression are often misunderstood, even by healthcare providers who wish to accommodate their transgender patients and clients. How transgender patients self-identify is a personal matter that must be respected. However, when medical attention is required, the treating healthcare provider needs to know — and respect — that a patient's gender at birth may differ from his or her gender identity.

To address these concerns, some healthcare providers use intake forms that allow patients to indicate the name and pronoun (e.g., "his" or "her") by which they prefer to be addressed if that information differs from the information that appears on insurance records and other documents.

Creating Inclusive Forms

The information patients provide on intake forms constitutes vital facts that will affect treatment and communication with patients' family members. Intake forms that do not accurately document patients' family relationships or gender identities simply fall short of the standard of equality in healthcare.

The HEI website at *www.hrc.org/hei* will offer model inclusive language for intake forms. Model language is also available in "Provider Guidelines -- Creating a Welcoming Environment," at *www.glma.org.*

Creating a Welcoming Environment for GLBT Patients

Based on "Provider Guidelines — Creating a Welcoming Environment," © Gay & Lesbian Medical Association. For the full text, including a discussion of unique health issues and guidelines for clinical practice, visit the GLMA website at www.glma.org.

Gay, lesbian, bisexual and transgender populations, in addition to having the same basic health needs as the general population, may have some unique needs and may experience health disparities related to sexual orientation and/or gender identity or expression. Many GLBT patients avoid care or receive inferior care because of perceived or real anti-GLBT sentiments among healthcare providers and institutions.

Healthcare providers can take positive steps to promote the health of their GLBT patients by examining their practices, office climates, policies and staff training. Here are some simple ways to make your practice or facility more welcoming and safe for GLBT patients.

1. Help GLBT patients find you by registering in an online provider directory.

One of the best known directories is hosted by the Gay and Lesbian Medical Association. There is no charge for a basic listing. Go to www.glma.org to create your profile.

2. Provide visual cues that signal a welcoming environment.

GLBT patients will often scan a healthcare setting to help them decide what information they will feel comfortable sharing. You can help put your patients at ease with displays such as: posters, brochures or patient information geared toward GLBT patients; a human rights or non-discrimination statement; magazines, newsletters or information about GLBT community resources; and symbols, such as the rainbow flag, pink triangle, HRC Equality sticker or unisex bathroom signs. If your office develops brochures or other educational materials for patients or conducts trainings, make sure these include relevant information for GLBT patients.

3. Use inclusive language in written forms and patient/provider discussions.

How you communicate with patients influences how comfortable they will feel being open about their sexuality and gender identity. Your intake form is particularly important, since it gives patients one of their first impressions of the healthcare setting. In your forms and in discussions with patients, use inclusive options and open-ended questions. Specifically:

- Approach patient interviews with empathy and open-mindedness and without judgment.
- Avoid language that presumes heterosexuality. Asking non-judgmental questions about sexual practices and behaviors is more important than asking about sexual orientation or gender identity or expression.
- Use phrases such as "spouse or partner" rather than just "spouse," "relationship status" rather than "marital status" and "married/partnered" rather than "married." When asking about a patient's significant other, use terms such as "spouse or partner."
- Add a "transgender" or "other" option to the male/female check boxes.
- Ask patients to clarify any unfamiliar terms, or repeat a patient's term with your own understanding of its meaning, to make sure you have no miscommunication. Be open about what you don't know. Your patients will appreciate your willingness to be educated.
- Be aware of related barriers to effective patient/provider communication. Avoid making assumptions with respect to socioeconomic status, cultural norms, racial and ethnic differences, age, physical ability,

geography, literacy, language spoken and level of comfort with direct communication about personal matters.

4. Treat disclosures of sexual and gender identities confidentially.

Encourage openness by explaining that the patient/provider discussion is confidential and that you need complete and accurate information to provide appropriate care. Ensure that the conversation will remain confidential and specify what, if any, information will be retained in the patient's medical records.

5. Train your entire staff.

All employees — from clinicians to receptionists — need to understand that discrimination against GLBT patients, whether overt or subtle, is as unethical and unacceptable — and in many states and municipalities as illegal — as any other kind of discrimination. Train all staff in standards of respect toward GLBT people and designate someone on-site to address any questions that may arise with respect to GLBT patients and their needs. Hiring a diverse staff, including openly GLBT people, is another way to make your practice open and accepting.

6. Be aware of resources for GLBT individuals.

Familiarize yourself with local and national GLBT organizations as well as online resources. Build collaborative relationships with local GLBT organizations and support groups and prominently display information about them.

SURVEY >> 2007 Healthcare Equality Index Survey

Question: Does your hospital have a written visitation policy that allows GLBT domestic partners the same access as spouses and next-of-kin?

Responses:

Yes:	**50** hospitals
No:	**27** hospitals
N/A:	**1** hospital

Question: Does your hospital have a written policy that allows same-sex parents the same access as opposite-sex parents for visitation of their minor children?

Responses:

Yes:	**45** hospitals
Sometimes:	**6** hospitals
No:	**24** hospitals
N/A:	**3** hospitals

Question: Does your hospital recognize advance healthcare directives such as durable powers of attorney for healthcare, healthcare proxies or living wills in allowing GLBT domestic partners decision-making authority for their hospitalized domestic partners?

Responses:

Yes:	**73** hospitals
Sometimes:	**1** hospital
No:	**4** hospitals

Question: Does your hospital counsel patients on their right to designate their domestic partner or someone else as medical decision maker when advising them of advance directive rights?

Responses:

Yes:	**56** hospitals
No:	**19** hospitals
N/A:	**3** hospitals

Question: Does your hospital have a written policy that allows same-sex parents the same rights as opposite-sex parents for medical decision-making for their minor children?

Responses:

Yes:	**45** hospitals
Sometimes:	**3** hospitals
No:	**26** hospitals
N/A:	**4** hospitals

Anyone who has spent a sleepless night staying up with an ailing loved one understands the role of family members in healthcare. This commonly shared experience affects gay, lesbian, bisexual and transgender families as much as other families. At one time or another, we all serve in the role of "family caregiver." Understanding this shared experience is the key to understanding the need for hospital policies that value all families.

Many national organizations officially recognize the diverse structures of families in the United States. For example, the National Family Caregiver Association describes family caregivers as the "bedrock upon which this country's healthcare system depends." The organization uses the term "family caregivers" to include family, friends, partners and neighbors.

In addition, the Joint Commission on Accreditation of Healthcare Organizations defines *family* as:

> *"The person(s) who plays a significant role in an individual's life. This may include a person(s) not legally related to the individual. This person(s) is often referred to as a surrogate decision maker if authorized to make care decisions for the individual should he or she lose decision-making capacity."*

Approximately 80 percent of all long-term care services are provided by family caregivers, according to a 2004 issue brief on family caregivers published by Georgetown University.[3] And 78 percent of adults who are in need of long-term care depend on family and friends as their only source of help, the brief said. With this understanding of the importance of family caregiving, not only for individual families but also for the healthcare system as a whole, healthcare providers should consider GLBT families when developing policies on family access to patients.

GLBT parents, like same-sex couples, live in virtually every community in the nation. The latest Census data found that one out of three female same-sex couples and one out of five male same-sex couples were raising children. These families live in 96 percent of all counties in the United States. The South has the highest percentage of same-sex couples raising children, compared to other regions.[4] GLBT families have the right to fair treatment every time they require medical attention.

"We have been together for 18 years. On our 10th anniversary we decided it was past time to get as much paperwork done as was available – the healthcare power of attorney, the living wills, the wills, etc. About two years after that, one of us ended up in a hospital and the other had to carry papers around and was asked to show them each night to regain the permission to stay. On our 15th anniversary, we decided to combine our last names and went through the process of standing in front of a judge, standing in line at the Social Security office for new cards, going through the process at our jobs, etc. It was a strange way to celebrate. However, just recently when one of us had to go into the hospital for a couple of days, having the same last name did help – although they thought she was my sister."

Nancy & Joan VanReece of Madison, Tenn.

Changing Legal Landscape

The legal recognition given to GLBT families has changed dramatically in recent years. Vermont broke new legal ground when it instituted civil unions in 2000, and same-sex couples who reside in Massachusetts have had the right to marry since May 2004. In a growing number of states and localities, domestic partnership registration or civil unions are an option for couples who do not have access to full marriage rights (see Appendix B on p. 26).

Despite the negative political climate these drives for anti-gay constitutional amendments have created, public support remains overwhelmingly in favor of hospital visitation rights for same-sex couples.

Unfortunately, more than half of all states have ratified state constitutional amendments prohibiting marriage for same-sex couples, causing confusion over the fundamental rights of GLBT families. So far, no state has interpreted its amendment as a block against hospital visitation rights for GLBT patients. But some family law advocates have expressed anxiety about the potential of these amendments to cause problems in the future.[5]

Despite the negative political climate these drives for anti-gay constitutional amendments have created, public support remains overwhelmingly in favor of hospital visitation rights for same-sex couples. For instance, a November 2006 poll of Ohio voters found that 91 percent supported hospital visitation rights for GLBT families, even though voters in the state had approved an initiative to block marriage rights for same-sex couples two years earlier.[6] This level of public support is consistent with polls conducted across the nation.

Bill Flanigan had to rush his partner, Robert Daniel, to the emergency room while on vacation in Baltimore in 2000. Bill was not allowed to see Robert or get any information on his condition because he "wasn't family." Even though the couple had a durable power of attorney and were registered as domestic partners in California, they were kept apart for four agonizing hours. Only when Robert's sister and mother arrived did Bill get to see his partner. By this time, Robert was no longer conscious, his eyes were taped shut and a breathing tube had been inserted, contrary to a prior understanding that the couple had regarding Robert's treatment. The two men never had the chance to say goodbye before Robert died.

Source: Lambda Legal

Legal Documents: Protecting Families

Even in jurisdictions that lack formal relationship recognition for same-sex couples, GLBT people can and should take legal steps to protect their families.*

The National Center for Lesbian Rights has produced a detailed publication for families to use in taking these legal steps called *Life Lines: Documents to Protect You and Your Family in Times of Trouble*.[7] This publication includes sample estate-planning documents that all families should have in place.

Kate Kendell, executive director of NCLR, advises: "Although these issues may be difficult to talk about, it is important for all people — and particularly lesbian, gay, bisexual and transgender people — to consider what should happen if they become seriously ill or incapacitated, and to put in place documents reflecting these wishes. Without such documents in place, your partner could be excluded from visiting you in the hospital and could have no say in medical decisions regarding your care. If your partner dies, as hard as that may be to allow yourself to imagine, you may have no say over her or his burial or cremation, you may lose all the belongings you acquired together, you may lose the home you've shared for years."

The *Life Lines* packet provides basic information about these documents as well as sample forms, including:

- Wills and trusts;
- Documents protecting choices of medical care;
- Documents concerning autopsies and disposition of remains;
- Hospital visitation authorizations;
- Durable powers of attorney for finances;
- Authorizations for medical treatment of minors; and
- Nominations of guardians for minors.

"One day in the not-too-distant future, we may live in a country that accords our relationships full legal protection and recognition," Kendell notes. "Until that day arrives we must protect ourselves from the ravages of homophobia and a legal system that too often ignores who we are to each other."

"In February 2007, while our family was visiting Miami, my partner, Lisa Marie Pond, died from a brain aneurysm. … The kids and I waited and waited at the emergency room for word about Lisa. Finally, when someone appeared, I was told that I was in 'an anti-gay city and state' and that I would need a healthcare proxy before I was allowed to see my partner of nearly 18 years or know of her condition. I immediately called our closest friend in our hometown of Olympia, Wash., who went to our house, found our legal documents and faxed them to the hospital in Miami. In those three hours, desperate for information about Lisa, I paced and watched other families being brought back into the trauma center. Yet my family waited, with no word about Lisa's condition. … When I finally was allowed to see Lisa, it was with a priest to perform her last rites."

Janice Langbehn, Olympia, Wash.

* The information in this publication is not intended as legal advice. For legal advice, please consult an attorney.

HIPAA and Healthcare Equality

From time to time, the Health Insurance Portability and Accountability Act is incorrectly cited as an obstacle to hospital visitation rights and decision-making authority for GLBT families. On the contrary, HIPAA specifically provides a mechanism for patients to indicate their wishes in these areas.

HIPAA is a 1996 federal law[8] that intended to improve the portability and continuity of health insurance coverage and to establish national health information privacy standards. The regulations provide protections for the privacy of certain individually identifiable health data, referred to as "protected health information," and establish rules balancing patient rights with the need to protect public health.

HIPAA should not be used as an excuse to deny rights to GLBT patients. Under HIPAA regulations, hospitals may use or disclose a patient's protected health information to a family member, other relative, close personal friend or any other person the patient identifies. The law respects the patient's wishes on matters of privacy and confidentiality.

As an added layer of protection, legal experts advise that patients express their wishes regarding hospital visitation, medical decision-making and other health issues by completing advanced healthcare directives. The HEI website at *www.hrc.org/hei* has links to information on this topic.

"In March 2004, I was given a diagnosis of macular degeneration and cataracts – both of which required surgeries. During this time I was forced to face having surgery alone because the hospital refused to allow my partner, Rockie, to be with me because we were not married or related to each other. As time goes on, the macular degeneration will rob me of my sight, and I will be more dependent on a person that has no legal right to be with me."

Juanita Imhoff, Cuyahoga Falls, Ohio.

HIPAA Privacy Rule

Question: Does the HIPAA Privacy Rule permit a doctor to discuss a patient's health status, treatment or payment arrangements with the patient's family and friends?

Answer: Yes. The HIPAA Privacy Rule at 45 CFR 164.510(b) specifically permits covered entities to share information that is directly relevant to the involvement of a spouse, family member, friend or other person identified by a patient in the patient's care or payment for healthcare. If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make healthcare decisions, the covered entity may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object. The covered entity may also share relevant information with the family and these other persons if it can reasonably infer, based on professional judgment, that the patient does not object. Under these circumstances, for example:

- A doctor may give information about a patient's mobility limitations to a friend driving the patient home from the hospital.
- A hospital may discuss a patient's payment options with her adult daughter.
- A doctor may instruct a patient's roommate about proper medicine dosage when she comes to pick up her friend from the hospital.
- A physician may discuss a patient's treatment with the patient in the presence of a friend when the patient brings the friend to a medical appointment and asks if the friend can come into the treatment room.

Even when the patient is not present or it is impracticable because of emergency circumstances or the patient's incapacity for the covered entity to ask the patient about discussing her care or payment with a family member or other person, a covered entity may share this information with the person when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient.

Thus, for example:

- A surgeon may, if consistent with such professional judgment, inform a patient's spouse, who accompanied her husband to the emergency room, that the patient has suffered a heart attack and provide periodic updates on the patient's progress and prognosis.
- A doctor may, if consistent with such professional judgment, discuss an incapacitated patient's condition with a family member over the phone.

In addition, the Privacy Rule expressly permits a covered entity to use professional judgment and experience with common practice to make reasonable inferences about the patient's best interests in allowing another person to act on behalf of the patient to pick up a filled prescription, medical supplies, X-rays or other similar forms of protected health information. For example, when a person comes to a pharmacy requesting to pick up a prescription on behalf of an individual he identifies by name, a pharmacist, based on professional judgment and experience with common practice, may allow the person to do so.[9]

Parental Decision-Making

Parents are responsible for the health and well-being of their children. Currently, GLBT parents are raising children in communities large and small, in every corner of this country.

Some states, including California, Colorado, Connecticut, Illinois, Massachusetts, New Jersey, New Mexico, New York, Oregon and Vermont, as well as the District of Columbia, allow same-sex couples to jointly petition to adopt. In several states, an individual can petition to adopt the child of his or her partner, in what is usually called "second-parent" or "stepparent" adoption. In all adoptions, a judge ultimately decides whether to grant the adoption petition.

Because adoption laws differ from state to state, same-sex couples who adopt sometimes feel insecure about how their families will be received away from home. For instance, the Human Rights Campaign Foundation heard from a lesbian couple who jointly adopted two children in Illinois and was planning to move to Florida, where state law prohibits gays and lesbians from adopting. In a response posted on the HRC website, Karen Doering, staff attorney at the National Center for Lesbian Rights, wrote, "Because a second-parent adoption is a final judgment, the Full Faith and Credit clause of the U.S. Constitution requires that all other states respect that judgment, regardless of the states' own laws or public policies. In other words, even though you could not have obtained a second-parent adoption in Florida, Florida must honor your adoption from Illinois."

Because adoption laws differ from state to state, same-sex couples who adopt sometimes feel insecure about how their families will be received away from home.

In a healthcare setting, it is important to know that no matter where an adoption took place, the legal relationship between children and their adoptive parents is valid in every state in the country. In addition, if a same-sex couple separates, or if one of the parents dies or becomes incapacitated, the legally recognized relationship between a parent and child continues, as it would if the parents were in an opposite-sex couple.

Because GLBT families are present in every part of the country, even a hospital that has not previously served a family headed by a same-sex couple should be aware these families are a part of the hospital's community. Parenting rights remain in place regardless of where a family travels. Hospitals should be prepared to recognize these families as equal to any other family that requires their services.

On March 4, 2007, Donna Jones and Sharolyn Takata rushed their daughter to the emergency room in Bakersfield, Calif., with a 104-degree temperature. At the door, the security guard insisted that only the "real" mother could accompany the child to see the attending physician – even though Jones and Takata were registered as domestic partners, and were both their daughter's legal parents.

Source:* The Bakersfield Californian, *March 7, 2007

SURVEY >> 2007 Healthcare Equality Index Survey

Question: Does your hospital provide any diversity or cultural competency training to personnel addressing the unique issues related to GLBT patients and their families?

Responses:

Yes: **57** hospitals
No: **21** hospitals

Even if the law is on your side and every recommended legal document is in place, gay, lesbian, bisexual and transgender families can encounter barriers in a facility if it fails to provide training that is inclusive of GLBT issues. It is not safe to assume that the mere existence of a policy or state law means that its spirit will be upheld. Thus, staff must receive training on these issues in every aspect of healthcare service delivery. The subconscious personal beliefs or biases of hospital staff often cause obstacles for GLBT patients and their families. Through good policy, training and open discussion of these issues, all hospital staff will become more comfortable with, and responsive to, diverse families.

Comprehensive Training

All employees need to understand that discrimination against GLBT patients, whether overt or subtle, is as unethical and unacceptable — and, in many states, illegal — as any other kind of discrimination. Employers should make it clear to employees that such discrimination will not be tolerated. It is also important to monitor compliance and to provide a mechanism for patients to report any disrespectful behavior.

The Gay and Lesbian Medical Association has resources for use in completing GLBT-inclusive cultural-competence training. The recommendations for hospital staff training programs include:

- Use of appropriate language when addressing or referring to patients and/or their significant others;
- Identifying and challenging any internalized discriminatory beliefs about GLBT people;
- Basic familiarity with important GLBT health issues; and
- Mechanisms for referral to GLBT-friendly providers.

GLMA works tirelessly at striving for healthcare equality for both patients and healthcare providers. Part of that effort is providing healthcare professionals with the tools they need to provide and advocate for healthcare that does not discriminate. GLMA's website at *www.glma.org* provides useful resources, including the publication *Provider Guidelines for Creating a Welcoming Environment* and many other tools for both patients and providers.

The HEI website at *www.hrc.org/hei* has links to numerous resources for healthcare professionals who are developing GLBT-inclusive cultural competency training.

Myths & Facts: Implementing GLBT Issues in Cultural Competency Training

Myth: Healthcare practices are culturally neutral; providers need only to learn technical skills that impact all patients equally.

Fact: Even technical operations such as drawing blood have diverse cultural meanings. All patients have unique needs based on factors personal to them, including race, ethnicity, language spoken, religion, age, socioeconomic status, education, physical and mental ability, sex, sexual orientation and gender identity. Without training, even the best technician may not have the skills to provide high quality care to all of their patients.

Myth: Provider's belief: "I treat all my patients alike."

Fact: Different patients have different needs, so treating all patients alike means providing lower-quality care to some of them. The key to providing culturally sensitive care is first, to become aware of your own biases and preconceptions about different kinds of people, and second, to tailor care to individual needs. Quality care is respectful and patient-centered.

Myth: A healthcare provider doesn't need to know a person's sexual orientation in order to provide good healthcare.

Fact: Ongoing care -- as opposed to one-shot interventions such as treating a sprained ankle in the ER -- requires knowing something about the patient's health risks, relationship status and sources of stress. Assuming that all patients are heterosexual means that healthcare providers miss opportunities for health education and may make patients uncomfortable, causing them to avoid care. Even in the case of a one-time ER visit, failing to acknowledge the patient's life partner can greatly compromise the patient's care and well-being.

Myth: Homosexual or bisexual sexual orientations and transgender identity are chosen, unlike inborn traits such as a person's race or biological sex at birth.

Fact: There is mounting evidence that sexual orientation and gender identity are strongly influenced by biology and that they cannot be altered by choice. Regardless, healthcare providers should be equipped to provide quality care to all kinds of people.

Myth: Cultural-competence or cross-cultural training is not needed with respect to GLBT persons.

Fact: The common ground between minority racial/ethnic and sexual identities in our contemporary culture is that they are stigmatized and associated with discrimination, harassment and violence. Stigma is stressful, and people from all oppressed minority groups may experience stress-related illnesses or unhealthy coping mechanisms. Healthcare providers need training to understand the effects of stigma and stress on all groups that experience them, including GLBT patients.

Source: Gay and Lesbian Medical Association

SURVEY >> 2007 Healthcare Equality Index Survey

Question: Does your hospital specifically bar employment discrimination based on sexual orientation by including the words "sexual orientation" or similar language in its primary non-discrimination or equal employment opportunity policy?

Responses:

Yes:	**65** hospitals
Sometimes:	**1** hospital
No:	**12** hospitals

Question: Does your hospital specifically bar employment discrimination based on gender identity or expression by including the words "gender identity" or "gender identity or expression" or similar language in its primary non-discrimination or equal employment opportunity policy?

Responses:

Yes:	**41** hospitals
No:	**36** hospitals
N/A:	**1** hospital

Question: Does your hospital offer health insurance coverage to your employees' domestic partners?

Responses:

Yes:	**54** hospitals
No:	**22** hospitals
N/A:	**2** hospitals

Equality is the best employment policy. And in a hospital setting, it can set the tone for better experiences for patients. Employers that develop and implement workplace strategies that address discrimination against gay, lesbian, bisexual and transgender employees can enhance their reputations, increase job satisfaction and boost employee morale. Results can include increased productivity, enhanced recruitment, reduced turnover and decreased vulnerability to legal challenges.[10]

As of July 2007, no federal law protects employees from workplace discrimination based on sexual orientation or gender identity. In most states, an employee can be fired for being gay, lesbian, bisexual or transgender.

But the momentum is building for full GLBT equality and fairness in the workplace. In 2008, when new state laws go into effect in Colorado and Oregon, discrimination in employment based on sexual orientation and gender identity will be barred in 12 states — California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington — and the District of Columbia.

Additionally, in Connecticut, Florida, Hawaii, Massachusetts and New York, state courts, commissions, agencies or attorneys general have interpreted existing state laws to include some protections against anti-transgender discrimination.

Some states have laws banning discrimination based on sexual orientation but have not yet added gender identity and gender expression to those laws. Employment discrimination based on sexual orientation is illegal in 20 states — California, Connecticut, Colorado, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire,

New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin — and the District of Columbia.

Several states have executive orders or regulations addressing discrimination against public employees *only*, as opposed to the laws referenced above that apply to both public *and* private employers. In three states — Indiana, Ohio and Pennsylvania — public employees are protected against discrimination based on sexual orientation and gender identity. In seven states — Alaska, Arizona, Delaware, Louisiana, Michigan, Montana and Virginia — public employees are protected against discrimination based on sexual orientation only.

"I work at a hospital that was voted the best place to work in New Jersey. I am an employee and I would like to say, I have never felt so accepted in any other place of employment. They have put my partner and me on the health plan, no questions asked, including dental. I am one of many from the gay community employed at this hospital."

Lori McLean, New Jersey

Domestic Partner Benefits

By extending benefits to GLBT workers' same-sex partners, employers demonstrate fairness in action. Domestic partner benefits plans also offer advantages for both employees and employers. Hospital administrators and employees can learn more about establishing domestic partner benefits from the Human Rights Campaign Foundation Workplace Project website at *www.hrc.org/workplace*.

In 13 states — California, Connecticut, Iowa, Illinois, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington — and the District of Columbia, public employees have access to domestic partner benefits. In Massachusetts, same-sex couples can legally marry and are treated as married couples for purposes of state employee benefits.

Corporate America Embracing Fairness

As of July 2007, more than half of all Fortune 500 companies offer domestic partner health benefits to their employees. In addition, 88 percent of those companies have employment non-discrimination policies that include sexual orientation, and 25 percent include gender identity or expression in their non-discrimination policies.[11]

Public opinion polls show that a majority of Americans believe workplace laws should protect GLBT people from discrimination. In fact, 60 percent of heterosexual respondents said they would feel comfortable working with an openly GLBT co-worker, according to a 2005 Harris Interactive poll.[12]

Valuing employees is good for business. A wealth of human resources literature indicates that when employers make employees feel valued, the companies gain a competitive edge.[13] According to a 1997 study by the Families & Work Institute, "The quality of workers' jobs and the supportiveness of their workplaces are the most powerful predictors of productivity, job satisfaction, commitment to their employers and retention."[14]

A November 2005 Gallup poll indicated that an employee's satisfaction with his or her employer, willingness to stay with the employer and inclination to recommend the employer to others are all strongly and positively related to the company's diversity policies.[15]

Including sexual orientation and gender identity and gender expression in a company's workplace non-discrimination policy is often a first step employers take to show their commitment to fairness in all of their business activities.

For more information on fair-minded employment policies, read the HRC Foundation publications *Non-Discrimination Policies: The Business Case*, *Transgender Issues in the Workplace: A Tool for Managers*, *The Corporate Equality Index: A Report Card on GLBT Equality in Corporate America*, *The State of the Workplace for GLBT Americans* and *Small Business Basics: How Small Businesses Can Create Fair Workplaces for GLBT Employees*.

What steps can hospitals and other healthcare agencies take to be more welcoming and inclusive of GLBT families?

- Adopt a *patient non-discrimination policy* that includes sexual orientation, gender identity and gender expression.
- Provide hospital *intake forms* that are inclusive of transgender patients, patients who have same-sex partners and GLBT parents of patients who are minors.
- Adopt a policy that provides same-sex partners with the same *hospital visitation* access as spouses and next-of-kin.
- Adopt a policy that provides same-sex couples with children the same *hospital visitation* access to visit their children that is available to opposite-sex couples.
- Adopt a policy stating a commitment to recognize and respect the *advance healthcare directives* of same-sex couples and GLBT patients.
- Adopt a policy of counseling patients on their right to *designate their domestic partner* or someone else as medical decision maker when advising them of advance directive rights.
- Adopt a policy stating a commitment to recognize and respect the *decision-making rights* of same-sex couples with children, giving them the same treatment as that given to opposite-sex couples regarding medical decision-making for their children.
- Create a thorough, GLBT-inclusive *cultural competence training* program. Require all employees and volunteers to take part in the training.
- Adopt an *employment non-discrimination policy* that includes sexual orientation, gender identity and gender expression.
- Provide health insurance coverage to employees' *domestic partners and non-biological children*.

What steps can gay, lesbian, bisexual and transgender people take to help protect themselves and their families in healthcare situations?

- *Talk with your heathcare provider*. It may be uncomfortable to begin the conversation about GLBT issues, but he or she needs to know about you to provide the best possible care and to advocate for you in an emergency situation.

- *Educate yourself about the unique health concerns of GLBT people.* Refer to the Gay and Lesbian Medical Association's "10 Things To Ask Your Healthcare Provider" series, available at *www.glma.org*.

- As part of a comprehensive plan for life and estate planning, complete all of the recommended *advanced healthcare directives*. Advanced healthcare planning is important for non-partnered patients as well as for GLBT couples.

- If you are a parent, consider designating *standby guardian* status for the "non-adoptive" or "de facto" parent of your children, if applicable.

- You are the best advocate for yourself. *Learn about your legal rights.* Speak up.

- *Be an advocate on behalf of the GLBT community.* Choose hospitals that score well on the Healthcare Equality Index, and encourage hospitals that have not participated in the survey to do so. Let hospital administrators know that you expect them to support their GLBT employees and to create a welcoming environment for GLBT patients. Actively oppose any legislation that intends to put obstacles in the way of fair-minded policies.

Many people refrain from talking about sexual orientation and gender identity because they believe the topics are taboo, or because they're afraid of saying the wrong thing. Knowing the right terminology can make conversations easier and more comfortable for everyone involved. For further information, see the HRC Coming Out Project's "Talk About It" resources, available online at *www.hrc.org/comingout.*

- ***Bisexual:*** A person emotionally, romantically, sexually and relationally attracted to both men and women, though not necessarily simultaneously; a bisexual person may not be equally attracted to both sexes, and the degree of attraction may vary as sexual identity develops over time.
- ***Coming out:*** The process in which a person first acknowledges, accepts and appreciates his or her sexual orientation or gender identity and begins to share that with others.
- ***Gender expression:*** How a person behaves, appears or presents him- or herself with regard to societal expectations of gender.
- ***Gender identity:*** The gender role that a person claims for him- or herself — which may or may not align with his or her physical gender.
- ***GLBT:*** An acronym for "gay, lesbian, bisexual and transgender."
- ***Homophobia:*** The fear and hatred of or discomfort with people who love and are sexually attracted to members of the same sex.
- ***Sexual orientation:*** An enduring emotional, romantic, sexual and relational attraction to another person, which is different from an innate sense of gender.
- ***Straight supporter:*** A person who supports and honors sexual diversity, acts accordingly to challenge homophobic remarks and behaviors, and explores and understands these forms of bias within him- or herself.
- ***Transgender:*** A term describing a broad range of people who experience and/or express their gender differently from what most people expect. It is an umbrella term that includes people who are transsexual, cross-dressers or otherwise gender non-conforming.
- ***Transsexual:*** A medical term describing a person who — with or without medical treatment — identifies and lives his or her life as a member of the gender that is not the one he or she was assigned at birth. Female-to-male (FTM) transsexuals are born female and transition to a male gender identity. Male-to-female (MTF) transsexuals are born male and transition to a female gender identity.

Appendix A: Gay, Lesbian and Bisexual Individuals and Same-Sex Couples in the United States

	Number of Same-Sex Couples, According to the 2000 U.S. Census	Estimated Number of Same-Sex Couples, According to the 2005 American Community Survey	Estimated Number of GLB Adults, According to the 2005 American Community Survey
Alabama	8,109	8,602	94,639
Alaska	1,180	1,644	18,768
Arizona	12,332	16,931	191,663
Arkansas	4,423	5,890	64,424
California	92,138	107,772	1,338,164
Colorado	10,045	15,915	173,674
Connecticut	7,386	10,174	115,511
Delaware	1,868	2,087	24,001
District of Columbia	3,678	3,420	32,599
Florida	41,048	54,929	609,219
Georgia	19,288	24,424	278,943
Hawaii	2,389	3,262	41,785
Idaho	1,873	2,096	23,615
Illinois	22,887	30,013	345,395
Indiana	10,219	15,714	169,700
Iowa	3,698	5,833	64,494
Kansas	3,973	6,663	72,557
Kentucky	7,114	9,710	106,094
Louisiana	8,808	9,006	102,315
Maine	3,394	4,847	52,801
Maryland	11,243	15,607	178,266
Massachusetts	17,099	23,744	269,074
Michigan	15,368	22,701	251,682
Minnesota	9,147	16,081	175,611
Mississippi	4,774	4,330	48,711
Missouri	9,428	14,722	160,912
Montana	1,218	1,662	18,703
Nebraska	2,332	3,986	42,934
Nevada	4,973	6,017	68,565
New Hampshire	2,703	5,578	63,787
New Jersey	16,604	20,677	245,628
New Mexico	4,496	6,063	68,411
New York	46,490	50,854	592,337
North Carolina	16,198	19,648	212,104
North Dakota	703	1,070	11,003
Ohio	18,937	30,669	335,110
Oklahoma	5,763	8,159	89,561
Oregon	8,932	10,899	121,645
Pennsylvania	21,166	29,213	323,454
Rhode Island	2,471	2,376	27,040
South Carolina	7,609	10,563	117,033
South Dakota	826	998	10,554
Tennessee	10,189	13,570	148,868
Texas	42,912	49,423	579,968
Utah	3,370	4,307	53,832
Vermont	1,933	2,157	23,871
Virginia	13,802	19,673	220,309
Washington	15,900	23,903	266,983
West Virginia	2,916	3,423	37,692
Wisconsin	8,232	14,894	160,698
Wyoming	807	1,044	11,419

Appendix B: State and Local Relationship Recognition

For more than a decade, state and local governments have been establishing legal mechanisms for the recognition of same-sex couples. Whether referred to as "domestic partnerships," "civil unions" or "reciprocal beneficiaries," many of these programs provide registrants with the right to visit their partners at hospitals. As of July 2007, the following jurisdictions have some form of relationship recognition for same-sex couples:

States That Officially Recognize Same-Sex Couples

California	*Statewide domestic partnership registration available since 1999*
Connecticut	*Statewide civil unions available since 2005*
District of Columbia	*Domestic partnership registration available since 2002*
Hawaii	*Statewide reciprocal beneficiaries registration available since 1997*
Maine	*Statewide domestic partnership registration available since 2004*
Massachusetts	*Statewide marriage available since 2004*
New Hampshire	*Statewide civil unions available effective 2008*
New Jersey	*Statewide civil unions available since 2007*
Oregon	*Statewide domestic partnership registration available effective 2008*
Vermont	*Statewide civil unions available effective 2000*
Washington	*Statewide domestic partnership registration available since 2007*

Cities and Counties That Officially Recognize Same-Sex Couples

City of Tucson, Ariz.	City of Hartford, Conn.	New York City, N.Y.
City of Eureka Springs, Ark.	Broward County, Fla.	City of Rochester, N.Y.
City of Berkeley, Calif.	City of Key West, Fla.	County of Rockland, N.Y.
City of Beverly Hills, Calif.	City of Miami Beach, Fla.	Southampton Town, N.Y.
Cathedral City, Calif.	City of West Palm Beach, Fla.	Suffolk County, N.Y.
City of Davis, Calif.	Athens-Clarke County, Ga.	Westchester County, N.Y.
City of Laguna Beach, Calif.	City of Atlanta, Ga.	Town of Carrboro, N.C.
City of Long Beach, Calif.	Fulton County, Ga.	Town of Chapel Hill, N.C.
Los Angeles County, Calif.	Cook County, Ill.	City of Cleveland Heights, Ohio
Marin County, Calif.	Village of Oak Park, Ill.	City of Ashland, Ore.
City of Oakland, Calif.	City of Urbana, Ill.	City of Eugene, Ore.
City of Palm Springs, Calif.	Iowa City, Iowa	Multnomah County, Ore.
City of Palo Alto, Calif.	City of Lawrence, Kan.	City of Philadelphia, Pa.
City of Petaluma, Calif.	City of New Orleans, La.	Travis County, Texas
City of Sacramento, Calif.	City of Portland, Maine	City of Lacey, Wash.
City of San Francisco, Calif.	City of Ann Arbor, Mich.	City of Olympia, Wash.
City of Santa Barbara, Calif.	City of Minneapolis, Minn.	City of Seattle, Wash.
Santa Barbara County, Calif.	Kansas City, Mo.	City of Tumwater, Wash.
City of Santa Monica, Calif.	City of St. Louis, Mo.	City of Madison, Wis.
City of West Hollywood, Calif.	City of Albany, N.Y.	City of Milwaukee, Wis.
City of Boulder, Colo.	Town of East Hampton, N.Y.	
City of Denver, Colo.	City of Ithaca, N.Y.	

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