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Medicaid, Spousal Impoverishment Protections and Same-Sex Couples in New York State

EXECUTIVE SUMMARY

Recent guidance issued by the Centers for Medicare and Medicaid Services (CMS) informed states of their abilities to extend financial protections to same-sex partners participating in Medicaid's long-term care program. The CMS guidance creates an opportunity for policy change in New York that would address important legal and economic inequities experienced by lesbian, gay, bisexual and transgender (LGBT) older adults across the state. The CMS letter allows states to extend specific protections related to lien imposition, lien and estate recovery, and transfer penalties to same-sex partners of Medicaid's long-term care recipients. For LGBT older adults who are already financially vulnerable, these protections will legally ensure that the healthy partner can continue to reside at home while the other partner lives at a long-term care facility. It will also prevent harmful financial penalties for transferring assets to one's spouse or partner. By enacting statutory change and amending guidance on Medicaid's long-term care program—described in detail beginning on page 8—these protections will prevent thousands of older LGBT New Yorkers from entering poverty or becoming homeless in order to qualify their partners for Medicaid coverage.

This paper provides background on Medicaid's long-term support program and offers historical context on the creation of the spousal impoverishment protections, initially available only to heterosexual married couples. This paper also examines how older LGBT couples face numerous financial and social barriers as they age, both nationwide and in New York State, and are thus highly reliant on support from Medicaid and similar programs. Based on this overview, this brief offers recommendations for New York on the specific actions necessary to enact the estate protections explicitly outlined in the CMS letter.

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Note: The analysis in this white paper speaks directly to the guidance offered by CMS in its June 2011 letter to state Medicaid offices, which focused exclusively on real-estate related "spousal impoverishment" protections for couples under Medicaid. We encourage New York to broaden its assessment and also consider changes that would protect same-sex couples in regards to asset and income spend-down rules, a protection currently offered to married heterosexual couples in New York.

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INTRODUCTION

On June 10, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a letter to state Medicaid Directors across the country, providing states with guidance to permit and implement policies that extend the same financial protections to same-sex spouses or partners that heterosexual married couples already receive. This guidance enables states to enact real estate recovery protections such as forgoing Medicaid liens on homes where a healthy spouse resides, prevents estate and lien recovery when the recovery would cause a same-sex spouse "undue hardship," and allows the transfer of a home and other assets to a same-sex spouse or partner without penalty.

Without these "spousal impoverishment" protections afforded to heterosexual married couples, a same-sex partner could lose a shared home and enter a life of poverty in order to qualify a sick partner for Medicaid, or in order to repay Medicaid expenditures after the death of his/her sick partner. Same-sex older couples face profound financial disadvantages under the current Medicaid system, since they are not entitled to protect any of their partners' assets or income, and a non-institutionalized partner might still be forced out of his/her home even if it is jointly owned.

Older LGBT adults in New York are highly vulnerable to poverty, making them more reliant on safety net programs such as Medicaid's long-term care support. Although 80 percent of long-term care in the U.S. is provided by family members, LGBT elders are three to four times more likely to be without children than their heterosexual peers. Many LGBT elders rely on institutional care for support as they age. Additionally, many LGBT elders are low-income, in poverty or at risk. A 2009 needs assessment of lesbian, gay, bisexual and transgender people in New York State found that 11.9 percent of survey respondents reported being in poverty (having no income, or household

income below $10,000).[i] Further, according to a 2009 study, approximately 4.1 percent, or 800,000, of New York State's population identifies as lesbian, gay or bisexual and another 300,000 identify as transgender.[ii] In New York City alone, conservative estimates suggest that at least 100,000 LGBT elders reside in this city, and that at least between 12,000 and 24,000 of them live in poverty.[iii] These figures underscore the urgent need to extend spousal impoverishment protections to LGBT older adults in New York.

The CMS guidance allows New York to proactively implement policies that protect same-sex couples from poverty when one partner receives long-term care under Medicaid. By acting now, New York State can ensure that same-sex couples receive this financial protection as allowed by the recent CMS guidance.

BACKGROUND

Established in 1965 under Title XIX of the Social Security Act, Medicaid is a program that provides health insurance for specific categories of low-income adults, their families and individuals with certain disabilities. Since its inception, Medicaid has come to play an important role in states' efforts to fill coverage gaps for the uninsured. Though managed by states, funding for Medicaid is divided between states and the federal government, with the federal government paying on average 57 percent of states' Medicaid costs.[iv] Medicaid currently covers an estimated 60 million Americans and coverage is anticipated to expand to include approximately 16 million people in 2014 through reforms created under the Affordable Care Act. These reforms, funded in large part by the federal government, will broaden coverage to nearly all individuals under 65 years old who earn up to 133% of the federal poverty level.[v]

Medicaid provides vital health insurance coverage for groups of the poorest Americans as well as those with chronic illnesses and disabilities. In general, Medicaid recipients are poorer and are in worse health than low-income people who have private insurance. States must offer Medicaid coverage to certain mandated groups who are considered to be in high need of coverage, such as pregnant women and children under age 6 in families residing below 133 percent of the federal poverty level, and many elderly individuals with disabilities who earn 75 percent of the federal poverty level.[vi] Nearly half of all poor Americans (those earning below the federal poverty level) rely on Medicaid coverage, because they do not have employer-sponsored health insurance or cannot afford to enroll in such plans. The coverage provided by Medicaid is of particular importance to low-income people with HIV/AIDS, Alzheimer's disease or chronic diseases that require specialized treatment and services. The breadth of services needed by these populations is covered by Medicaid including "case management, dental care, mental and behavioral health services, rehabilitation services, personal care, and nursing facility and home health care."[vii] People of color comprise a large proportion of Medicaid beneficiaries with 27 percent of African-Americans and Latinos, 10 million and 13 million people respectively, receiving coverage.[viii] [ix]

Medicaid is also the single largest payer of long-term care in the United States. Medicaid's long-term care program has become an important safety net for the 4 percent of older adults who live in institutional settings such as nursing homes, and the 65-70 percent of elders who will utilize some form of long-term care or community-based services in their later years.[x] Long-term care is often a necessary solution for older adults and people with disabilities who rely on institutional or in-home health services. Despite the high percentage of older Americans who rely on long-term services, this type of intensive prolonged care is costly to provide and there are few resources to help pay for these services. Annual costs for care in a nursing home or other long-term care facility average more than $68,000 nationally, while in-home services cost an average of $18,000 yearly.[xi]

Medicare rarely covers such institutional or home-based care and few Americans have private insurance or long-term care insurance that will fully cover these costs. Within this context, Medicaid has come to provide primary coverage for people expecting to receive long-term care services and presently covers more than two-thirds of nursing home residents.[xii] More than half of the individuals who receive long-term services are age 65 and above.[xiii] Reliance on Medicaid's long-term care program will most certainly increase as the population of older adults expands over the coming years—including the number of older adults who are lesbian, gay, bisexual and/or transgender.

'SPOUSAL IMPOVERISHMENT' PROTECTIONS

For low-income and the majority of middle-income Americans, the high costs of long-term care are nearly impossible to afford. Medicaid serves as a critical resource for people unable to pay the costs of long-term care. However Medicaid assistance is only available to people who are very low-income, or who have depleted most of their savings to pay for care out-of-pocket. These "spend-down" regulations previously required that all assets held jointly or individually by married (heterosexual) Medicaid applicants be used to pay for nursing home care.[xiv] A healthy spouse was allowed to keep only $2,000 in assets, while the full income of the spouse applying for support had to be depleted. As a result, it was not unheard of for married couples to get divorced to protect the couple's savings and qualify one spouse for Medicaid support.[xv] Congress alleviated this financial hardship by adding "spousal impoverishment" protections to Medicaid in the 1988 Medicare Catastrophic Coverage Act.

Under the regulations created by spousal impoverishment protections, a healthy partner need not live in poverty to qualify a spouse for long-term care. If one spouse needs long-term care through Medicaid (the "long-term care beneficiary"), the other spouse (generally referred to as the "healthy spouse" or the "community spouse") is protected through certain exemptions. These protections include:

1) Exempting certain income and assets from Medicaid eligibility determinations under the long-term care program;

2) Limiting imposition of liens on a residence occupied by a spouse;
3) Limiting lien and estate recovery during the lifetime or in-home residence of a spouse; and
4) Exempting long-term care claimants from penalties otherwise incurred for transferring property without fair consideration if the transfer is to a spouse.[xvi]

These protections were implemented with specific federal and state guidelines so that a community spouse would be able to live at home, protected from impoverishment. Currently, Medicaid bases long-term care qualification on the pooled financial assets of married couples at the time of institutionalization, minus an amount set aside for the protection of the community spouse. This is called the Community Spouse Resource Allowance (CSRA). The CSRA is the greater of the minimum resource standard set by the state of residence (currently $74,820 for New York), or 50 percent of their assets up to a maximum set by the federal government ($109,560 in 2011).[xvii] [xviii] Once the spouse has entered Medicaid-covered long-term care, the CSRA belongs solely to the community spouse. In the case of same-sex couples, no CSRA is deducted when determining eligibility, and no CSRA set-aside is allowed to protect the partner who remains in the community.

Spouses are also protected in regards to real estate and non-liquid assets. Federal Medicaid rules prohibit states from imposing a lien on the home of a long-term care recipient if his or her spouse lives in the home, and from recouping Medicaid expenditures from the estate until the community spouse has died. These rules mean that a heterosexual community spouse can keep the couple's home (without equity limit), household goods, an automobile, and burial funds until his or her own death.[xix] Married heterosexual couples may also transfer assets to each other for less than fair market value without penalty. Spousal impoverishment provisions also prohibit states from recovering Medicaid expenditures from a community spouse's estate if doing so would create an "undue hardship" to his or her heirs. What constitutes an "undue hardship" is largely determined by states, with guidance from the federal government.[xx]

CONSEQUENCES FOR SAME-SEX COUPLES

The limited data on LGBT older adults has shown that they have worse health outcomes and higher poverty rates than their heterosexual counterparts. LGBT people routinely experience cultural incompetence and discrimination in mainstream healthcare settings; even when these providers are supportive, fear of discrimination keeps many LGBT older people in the closet, preventing them from seeking out the care they need. The results of delayed care-seeking can include can include depression, poor nutrition, premature mortality and more. LGBT older adults are also highly vulnerable to poverty given the ways that stigma and discrimination across the lifespan have disrupted their opportunities for stable employment and opportunities to save for their later years. Therefore, they tend to rely heavily on safety net programs such as Medicaid's long-term care program.

When the spousal impoverishment regulations were passed, no states allowed same-sex couples to marry, and these protections simply did not apply to same-sex couples. While married heterosexual couples generally no longer feared impoverishment as it related to obtaining long-term care, mutually dependent or partnered LGBT elders could still lose their homes and assets in order to qualify for Medicaid's long-term care support. Even states that had opened marriage to same-sex couples were bound by the Defense of Marriage Act (DOMA), which prevents the federal government from recognizing the lawful marriages of same-sex couples under state law. Consequently, even legally married same-sex couples were not recognized by Medicaid's spousal protections. LGBT elders, even those with long-term partners, had to apply for long-term care support as a single person and were therefore only entitled to keep a mere $2,000 in countable assets. The same-sex community partner (a legal stranger under the law) can keep any and all assets in his or her own name, but is not entitled to any assets or property held by the partner receiving long-term care. [xxi]

As for real estate, a same-sex community spouse may lose the couple's home, depending on who officially owns it. If the home is in the name of the community spouse, it is fully protected since they are legal strangers. If the home is jointly owned, the couple risks losing it, and Medicaid will almost certainly place a lien on the home, creating problems if the long-term care beneficiary dies or the community spouse wants to move. If the home is in the name of the long-term care beneficiary, the community spouse risks losing the home immediately and will certainly lose it upon the death of the partner in long-term care.

CMS GUIDANCE

Advocacy efforts over the years, led mainly by LGBT organizations such as SAGE, led to recent steps by the federal government to begin alleviating these inequities between heterosexual and same-sex couples. In April 2011, the U.S. Department of Health and Human Services announced that states would be notified about their abilities to offer same-sex spouses and partners the same protections that exist for married different-sex couples.[xxii] This notification came from CMS on June 10 in a letter, directed to state Medicaid Directors, explaining that they were able to offer protections to same-sex couples with regard to lien imposition, lien and estate recovery and transfer penalties. Specifically, states are now able to choose not to impose liens if a same-sex community spouse resides in the home; and, under the "undue hardship" provisions, states can forego recovery of costs from an estate until after the death of a community same-sex spouse or partner. In addition, states may allow individuals in long-term care to transfer property for less than fair market value to a same-sex spouse or partner.[xxiii]

The CMS guidance ensured that states understood their options and abilities to afford certain protections to spousal and domestic partners. However, the letter did not mandate state action on these protections, nor did it specify how states could take steps to enact them. Since June, advocates nationwide have begun to examine how they can initiate the extension of the estate

recovery protections outlined in the CMS guidance. Though the guidance only explicitly addresses real estate protections, advocates in states such as California have advanced legislation based on language in the CMS letter that offers states permission to flexibly define "undue hardship." In California, the proposed legislation interprets undue hardship to allow for protections in asset and income spend-down rules. The CMS guidance opens up a range of opportunities for state-level advocates and policymakers to extend protections to older adult same-sex couples.

SPOUSAL IMPOVERISHMENT PROTECTIONS AND SAME-SEX COUPLES IN NEW YORK STATE

New York uses a significant portion of its Medicaid funding toward long-term care. On average, 4.4 million people were enrolled in New York State's Medicaid program in 2009.[xxiv] More than 490,000 people over age 65 received some form of long-term care services in skilled nursing facilities, home health services or personal care in 2005 (the most recent year for which person-level data was available).[xxv] The majority of these recipients reside in New York City.

For years, New York has prioritized outreach and healthcare delivery to the most vulnerable and needy older adults in the State. New York spends more than a third of its Medicaid dollars on long-term care, and a recent report by AARP ranked New York State second in the nation at enrolling low-income disabled adults in Medicaid. The same report ranked New York highly in terms of regular staffing of home health and personal care workers, and in the low turnover rates of nursing home attendants.[xxvi] New York's Medicaid Redesign Team, convened by Governor Andrew Cuomo in 2011, seeks to sustain and replicate practices that increase the quality of care for Medicaid recipients while containing program costs. Maintaining New York's outreach and services to marginalized and poor elders will be critical for the 13.4 percent of the population aged 65 or older, as well as the significant number of older adults who have been affected by the recent economic downturn and who will face considerable challenges in their aging futures.[xxvii]

LGBT older adults could also benefit from broader protections under Medicaid. As with the population of all older adults, the numbers of LGBT elders are expected to double in size over the next several decades. Estimates suggest that this number will reach about 3 million nationally by 2030.[xxviii] According to a 2009 study, approximately 4.1%, or 800,000, of New York State's population identifies as lesbian, gay or bisexual and another 300,000 identify as transgender.[xxix] Conservative estimates suggest that at least 100,000 LGBT elders reside in New York City, and that at least between 12,000 and 24,000 of them live in poverty.[xxx] These figures underscore the urgent need to extend spousal impoverishment protections to LGBT older adults in New York.

RECOMMENDATIONS FOR EXTENDING SPOUSAL IMPOVERISHMENT PROTECTIONS IN NEW YORK STATE

Note: The analysis in this white paper speaks directly to the guidance offered by CMS in its June 2011 letter to state Medicaid offices, which focused exclusively on real-estate related "spousal impoverishment" protections for couples under Medicaid. We encourage New York to broaden its assessment and also consider changes that would protect same-sex couples in regards to asset and income spend-down rules, a protection currently offered to married heterosexual couples in New York.

Given New York State's recent passage of marriage equality, New York is poised to quickly move its Medicaid policies to more closely align with its legislation. Further, because New York recognizes same-sex spouses, and the State has a history of LGBT-supportive policy and regulations, protections based upon claims of dependency and undue hardship might be easier to extend.[xxxi]

Protecting the rights of non-married and non-registered partners is also vital in states such as New York, where couples can, but have not, married. Financial and asset protections in Medicaid's long-term care program might be extended to other types of family structures, including non-married same-sex couples, families of choice (such as two friends who own a home together), or elder heterosexual couples who live together but cannot afford to or choose not to marry. Such relationships might be described as "mutually dependent partners," a defined relationship that is not generally recognized, but could be legally verified by demonstrating mutual financial dependence. In order to recognize and protect mutually dependent partners, New York can draw from criteria created for domestic partner recognition.[xxxii] New York would need to amend its statute to extend protections to these partners. Adopting such a policy would help create financial security for thousands of older adults across the State, and provide a model recognizing these partners in other states.

The following recommendations briefly outline the statutory or guideline changes necessary in New York to implement the various spousal impoverishment protections outlined by the CMS guidance. These recommendations are drawn directly from guidance outlined in the August 2, 2011 memorandum to SAGE from The Williams Institute, *Securing Protections for Same-Sex Partners Against Impoverishment Related to Medicaid-Supported Long Term Care Services*.

Lien Imposition

New York statutes prohibit lien imposition against spouses and also recognize marriage and the similar status of same-sex couples.

As it stands, existing New York law does not bar lien imposition against a same-sex spouse. However New York may now issue guidance confirming that these protections must be extended to same-sex spouses based on the New York statute that requires the State to treat same- and different-sex spouses equally when not prevented by federal law from doing so. As the CMS Letter notes, the federal act prohibiting states from imposing liens in this context, the

Tax Equity and Fiscal Responsibility Act (TEFRA), provides a "floor" for protection, rather than a ceiling, and a state may choose to set rules that prohibit it from pursuing a lien in other circumstances. Therefore, federal law does not prohibit New York from extending these protections to spouses who are not covered under TEFRA.

Estate Recovery

A New York statute prohibits estate recovery in cases of "undue hardship." Detailed guidance outlines what constitutes undue hardship under this statute, such as showing that the Medicaid recipient is the partner's sole means of income; the estate assets subject to recovery is a home of modest value and it is the primary residence of the beneficiary; or there are other "compelling circumstances."

State guidance on estate recovery should be amended to confirm that protection of a same-sex spouse constitutes a "compelling circumstance" for the purposes of New York law.

Asset Transfer Relief Due Based on Hardship

New York law provides strict criteria for showing undue hardship. A New York statute directs the commissioner of health to define hardship, but states that the definition must require that the institutionalized person, or the institutionalized person's spouse, is unable to retrieve the resource or to obtain fair market value for the asset despite his or her best efforts. According to regulations, hardship occurs only if: 1) the institutionalized person who made the transfer is otherwise ineligible for Medical Assistance; 2) the institutionalized person is unable to obtain medical care without the provision of Medical Assistance; and 3) despite his or her best efforts, the institutionalized person or the person's spouse is unable to have the transferred resource returned or to receive fair market value for the resource. Guidance also requires that denial of eligibility would deprive the individual of food, clothing, shelter, or other necessities of life.

Because it can be difficult for a same-sex spouse to show that a transferred asset cannot be returned, New York statute should be amended to protect same-sex spouses and partners. Because regulations and guidance also pose significant hurdles to showing "undue hardship," these provisions should be amended to avoid penalizing otherwise eligible claimants for engaging in transfers to a same-sex spouse.

Asset Transfer Relief Due Based on Purpose Other than Long-Term Care Qualification

A New York statute provides that a long-term care beneficiary will not be penalized for transferring an asset for less than fair market value if the transfer was made for a purpose other than to qualify for Medicaid. Guidance states that "pertinent documentary evidence" can be used to show that a transfer was made for a purpose other than to qualify for Medicaid, including "legal documents, real estate agreements, relevant correspondence, medical reports, etc."

Although the existence of pooled resources and inter-spousal support responsibilities should be sufficient to allow for transfers, examples of legitimate transfers between same-sex spouses would be useful.

CONCLUSION

The extension of Medicaid spousal impoverishment protections statewide will have a considerable impact on the economic well-being and health of LGBT elders in New York. By amending specific statutes and guidance, New York can implement "spousal impoverishment" protections for LGBT older adults, shielding thousands of elders from poverty and homelessness and ensuring their access to long-term care. As this white paper notes, New York has a strong record of protecting and supporting vulnerable older adults, and a history of implementing LGBT-affirming policies. SAGE encourages New York to continue supporting our diverse LGBT communities by moving quickly to extend financial protections to elder same-sex couples so that they are able to age with dignity and respect, as well as financially secure.

END NOTES

[i] Somjen Frazer, *LGBT Health and Human Services Needs in New York State*, Empire State Pride Agenda Foundation and The New York State Lesbian, Gay, Bisexual and Transgender Health and Human Services Network, 2009, 15.
[ii] Ibid.
[iii] These figures are based on a variety of different studies that have estimated the percentage of gay, lesbian and bisexual people to be between 4 and 8 percent. Few studies have measured the percentage of transgender people. However, measuring the number of LGBT people is difficult, given the undercounting caused by factors such as stigma, underreporting and a range of methodological barriers, such as inconsistent question formats. See Williams Institute, UCLA School of Law, *Poverty in the Lesbian, Gay and Bisexual Community.* (Los Angeles: Williams Institute, 2009).
[iv] *Key Questions About Medicaid and Its Role in State/Federal Budgets and Health Reform*, The Henry J. Kaiser Family Foundation, The Kaiser Commission on Key Facts, January 2011, 1.
[v] Kellan Baker and Jeff Krehely, *Changing the Game: What Health Care Reform Means for Gay, Lesbian, Bisexual and Transgender Americans*, Center for American Progress, March 2011, 8.
[vi] *Medicaid: A Primer*, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, 2010, 7.
[vii] Ibid, 16.
[viii] *Medicaid's Role for Black Americans*, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, May 2011, 1.
[ix] *Medicaid's Role for Hispanic Americans*, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, May 2011, 1.
[x] Peter Kemper, et al., "Long-Term Care Over an Uncertain Future: What Can Current Retirees Expect?" *Inquiry* 42, no. 4 (2005): 335-3530.
[xi] National Clearinghouse for Long-Term Care, 2008.
[xii] *Medicaid: A Primer*, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, 2010, 3.
[xiii] Medicaid and Long-Term Care Services and Supports, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, March 2011, 1.
[xiv] *Medicaid's Spousal Impoverishment Protections*, Georgetown University, Long-term Care Financing Project, February 2007, 1.
[xv] Ibid.
[xvi] *Securing Protections for Same-Sex Partners Against Impoverishment Related to Medicaid-Supported Long Term Care Services*, The Williams Institute, Memorandum, August 2, 2011, 7.
[xvii] *New York State Department of Health Medicaid Reference Guide*, January 2011, 894. Accessed Septmber 19, 2011, http://www.health.state.ny.us/health_care/medicaid/reference/mrg/mrg.pdf.
[xviii] *Access to Long-Term Services and Supports: A 50-State Survey of Medicaid Financial Eligibility Standards*, AARP Public Policy Institute, 2010, 10.
[xix] Text within the "spousal impoverishment protections" section is drawn from the March 2010 report by SAGE and Movement Advancement Project, *Improving the Lives of LGBT Older Adults*.
[xx] Mallory, Christy. *Same-Sex Couples & Medicaid Long-term Care*, The Williams Institute, Presentation, August 13, 2011.
[xxi] *Improving the Lives of LGBT Older Adults*, SAGE and Movement Advancement Project, March 2010, 15.

[xxii] *Securing Protections for Same-Sex Partners Against Impoverishment Related to Medicaid-Supported Long Term Care Services*, The Williams Institute, Memorandum, August 2, 2011, 8.
[xxiii] Mallory, Christy. *Same-Sex Couples & Medicaid Long-term Care*, The Williams Institute, Presentation, August 13, 2011.
[xxiv] *State Fiscal Conditions and Medicaid*, The Henry J. Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, February 2010, 4.
[xxv] Michael Birnbaum, et al. *Medicaid Long-Term Care in New York: Variation by Region and County*, Medicaid Institute at United Hospital Fund, December 2010, accessed September 19, 2011, http://medicaidinstitute.org/assets/862
[xxvi] "Bad Grades on Long-Term Care," Editorial. *New York Times*, September 12, 2011, accessed September 15, 2011, http://www.nytimes.com/2011/09/13/opinion/bad-grades-on-long-term-care.html.
[xxvii] "New York Quick Facts from the Census Bureau," U. S. Census Bureau, accessed September 14, 2011, http://quickfacts.census.gov/qfd/states/36000.html.
[xxviii] *Improving the Lives of LGBT Older Adults*, SAGE and Movement Advancement Project, March 2010, 2.
[xxix] Somjen Frazer, *LGBT Health and Human Services Needs in New York State*, Empire State Pride Agenda Foundation and The New York State Lesbian, Gay, Bisexual and Transgender Health and Human Services Network, 2009, 15.
[xxx] These figures are based on a variety of different studies that have estimated the percentage of gay, lesbian and bisexual people to be between 4 and 8 %. Few studies have measured the percentage of transgender people. However, measuring the number of LGBT people is difficult, given the undercounting caused by factors such as stigma, underreporting and a range of methodological barriers, such as inconsistent question formats. See Williams Institute, UCLA School of Law, *Poverty in the Lesbian, Gay and Bisexual Community.* (Los Angeles: Williams Institute, 2009).
[xxxi] *Securing Protections for Same-Sex Partners Against Impoverishment Related to Medicaid-Supported Long Term Care Services*, The Williams Institute, Memorandum, August 2, 2011, 3.
[xxxii] Ibid, 2.