

# Supporting LGBT Communities in the COVID-19 Pandemic

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**SUMMARY.** LGBT individuals suffer disproportionately in the COVID-19 pandemic. They are likely to be exposed to COVID-19 in greater numbers and suffer to a greater degree if they contract the disease. They are more likely to lose access to essential medical services, including gender confirmation and HIV medications. They are likely to suffer economic harms to a greater degree, since they are more likely to work in industries with exposure to, and likely to close because of COVID-19. They also are more likely to experience mental and emotional harms arising from the isolation, or sheltering-in-place COVID-19 necessitates. Such isolation often occurs with hostile or violent family members, while LGBT safe-spaces, organizations, institutions, and events, such as LGBT pride and LGBT centers are shut down or go virtual. This can take a toll on physical, emotional, and mental health, especially for youth and elderly LGBT individuals. Finally, when LGBT individuals seek assistance from elsewhere, including through social services, homeless shelters, and welfare, they often suffer discrimination. All these harms fall even more disproportionately on LGBT people of color and transgender individuals. To combat these harms, policymakers must implement stringent antidiscrimination protections and policies that cover the needs of LGBT individuals such as access to certain medical services. But more importantly, they should ensure that the LGBT organizations providing these services in a safe space remain funded and open. They should also collect data on the LGBT community.

## Introduction

As Michelle Bachelet, the UN High Commissioner for Human Rights, has acknowledged, “LGBTI people are among the most vulnerable and marginalized in many societies, and among those most at risk from COVID-19.” The pandemic has widened existing inequity in society and the LGBT community is no exception.

The harms that LGBT individuals will experience as a result of the COVID-19 pandemic fall into several categories: (1) First, there are COVID-related health harms. There is reason to believe that LGBT individuals face higher morbidity and mortality risk from the pandemic. (2) Other medical harms including lack of access to necessary medical services such as gender confirmation or HIV treatment during the pandemic. (3) Mental and emotional health harms arising from the isolation, or sheltering-in-place COVID-19 necessitates. Such isolation often occurs with hostile or violent family members. This can take a toll on physical, emotional, and mental health, especially for youth and elderly LGBT individuals. (4) Economic insecurity, given that LGBT individuals are more likely to work in industries with exposure to, and likely to close because of COVID-19. (5) Discrimination in employment and access to social services. Finally, (6) lack of community support as LGBT community organizations founder and close.

Each of these harms reinforce each other. Health harms can cause job loss and economic insecurity, and vice versa. Mental health and

addiction burdens can take a toll on physical health, and render LGBT individuals ineligible for social services and welfare, which worsens these harms.

Next, this Chapter considers the increased harms that LGBT minorities—people of color and transgender individuals, face along all these axes. It concludes by considering solutions, and explaining why an inclusive approach to the LGBT experience can be a valuable tool in the broader fight against COVID-19.

## COVID Related Health Issues

Experts have suggested that LGBT individuals might face higher risks if they contract COVID-19. As numerous LGBT organizations explained in an open letter, LGBT individuals have underlying health problems at higher rates than the general population that can magnify the risk of COVID-19. For example, they use tobacco, and also have asthma, at rates 50% higher than the general population, which might increase their vulnerability to respiratory conditions such as COVID-19. The community also has much higher rates of HIV and cancer, which can leave some LGBT individuals immunocompromised and vulnerable to COVID-19. While research is limited, people living with HIV are more likely to have cardiovascular and chronic lung diseases that increase their vulnerability. These concerns are compounded for minority groups—for example, half of all black cisgender men who have sex with men (MSMs) and half of transgender women will be

diagnosed with HIV in their lifetime. Finally, as discussed later in this Chapter, LGBT individuals are more likely to face economic insecurity and homelessness, which increases their exposure and vulnerability to COVID-19.

If they contract COVID-19, LGBT individuals are more likely to face barriers to receiving health care. Discrimination in health care settings remains high, and numerous LGBT individuals report avoiding health care settings except in emergency situations. Further, rates of insurance coverage are lower: 17% of LGBTQ adults do not have any kind of health insurance coverage, compared to 12% of non-LGBTQ adults (Whittington et al., 2020). Indeed, transgender individuals who face barriers to accessing bathrooms that match their gender in workplaces and elsewhere might even be unable to wash their hands to reduce COVID-19 risk (Hensley-Clancy, 2020).

LGBT individuals may also experience medical events at higher rates than the rest of the population. Transgender individuals may need access to gender confirming medication. People living with HIV need access to lifesaving drugs that they must take on a daily basis. COVID-19 has limited access to these services. For example, the Johns Hopkins Center for Transgender Health has postponed gender-affirming surgeries, and “has a moratorium on new patient intakes due to the retasking of personnel and resources to the COVID-19 response.” Similarly, as I learned in an interview with the Chief of Staff of the Los Angeles LGBT Center, one of the nation’s largest providers of LGBT health services in the nation, their clients feared loss of access to medication and other services. Crowding as individuals try to access these resources can increase risk for COVID-19.

LGBT individuals have among the highest rates of suicidality and substance abuse, with 40% of transgender individuals attempting suicide at some point in their lives, and LGBT youth attempting suicide at three times the rate of heterosexual youth. Similarly, LGBT adolescents are nearly twice as likely as their non-LGBT peers to have used some kind of illicit substance. Isolation and lack of supportive surroundings are linked to suicidality and relapses, or increased substance abuse (The Fenway Institute, 2020).

Such issues are particularly pronounced among certain subpopulations. First, LGBT youth often lack access to supportive surroundings. Research suggests that only a third of LGBT youth have accepting parents, and an additional third experience outright rejection, which increases suicide risk and depression exponentially (The Trevor Project, 2020). With shelter-in-place orders, CBS News reports, LGBT youth find themselves isolated at home—or what one interviewee called a “war zone.” Some experience death threats. Unsurprisingly, NPR reports that the Trevor Project, a suicide prevention organization for LGBTQ youth, has seen in some cases twice the level of outreach to the organization during the pandemic than earlier in 2020.

Particularly problematic is the inability of students to access supportive resources outside the home. Schools provide material resources: 30% of youth in foster care, and 40% of homeless youth identify as LGBT. School closures mean limited access to food and other resources (Whittington et al., 2020). Although less than half

of schools nationwide have organizations dedicated to supporting LGBT youth, school closures might also mean that students are unable to access those resources. University closures can present even more urgent situations, with some students forced to return to homes with which they may have cut ties, or to families that continue to misgender them—for example, referring to male transgender children as female. One student tells a reporter how “her parents call her by the wrong name, use the wrong pronouns.” Apart from being cut off from support, LGBT youth may not be able to safely access transition or HIV related medication when living with their parents (Hensley-Clancy, 2020).

Older LGBT individuals face similar issues. Even before COVID-19 struck, LGBT individuals 50 years of age and older were twice as likely to live alone than their straight counterparts, half as likely to have significant others or close relatives, and four times less likely to have children; almost one quarter had no one to call in the case of an emergency (SAGE USA, 2020). Further, this population is more likely to experience health concerns, including diabetes, asthma, heart disease, HIV, cancer, hypertension, and disabilities (SAGE USA, 2020). LGBT older people are far more likely to rely on “chosen” family—close friend groups—for help. But since they do not live with these individuals, and close friends are likely to age at the same rate, such reliance can be of limited help during COVID-19’s spread. And, laws such as the Family Medical Leave Act do not allow elders’ chosen family to take time off to care for them if they were to become sick (SAGE USA, 2020).

Finally, even among the rest of the LGBT community, the isolation that COVID-19 necessitates can lead to harms. While 35% of straight women experience rape, physical violence, or stalking by an intimate partner, the number rises to 44% of lesbians and 61% of bisexual women. Similarly, 54% of transgender and non-binary respondents experience intimate partner violence in their lifetimes. Further, as the next Section describes, because of higher rates of poverty and stigma, and limited access to health insurance, many LGBT individuals—whether youth, elderly, or others, are unable to leave toxic home environments (Human Rights Campaign Foundation, 2020a). The isolation that COVID-19 requires thereby exacerbates severe harms that LGBT individuals experience at home.

## Economic Issues

Health harms can reinforce the economic harms that LGBT individuals face. As the premier research organization on LGBT issues, the Williams Institute, and a lead advocacy non-profit for LGBT equality, the Human Rights Campaign, have emphasized, “LGBTQ Americans are more likely than the general population to live in poverty and lack access to adequate medical care, paid medical leave, and basic necessities during the pandemic” (Whittington et al., 2020). The poverty rate among LGBT individuals is 22%, compared to 16% among non-LGBT individuals. Further, one in five LGBTQ adults have not seen a doctor when needed for financial reasons.

Against this background, COVID-19 has struck the community hard. LGBT individuals are overrepresented in industries that result in high exposure to the coronavirus. Further, many of these industries are most likely to be shut down as a result of the

pandemic, increasing unemployment in the community. Research shows that the top five industries in which LGBT individuals work—comprising 40% of LGBT employment—are hospitals, restaurants and food services, K-12 education, colleges and universities, and retail (Whittington et al., 2020). By contrast, only 22% of non-LGBT individuals work in these industries. Even with short term economic stimulus, the stress on these industries means that LGBT individuals may face long-term unemployment.

### Discrimination

LGBT individuals face discrimination in the workplace. In 2018, the Human Rights Campaign found that nearly half of all LGBT workers remain closeted at work. And, only about half of straight/cisgender employees reported they would be “very comfortable” with an LGBT coworker. A recent Supreme Court ruling has held that LGBT employees are protected from discrimination under federal law. But employment discrimination protections are hard to apply if the employer is not open about the reasons for the negative employment action. Further, commenters believe that the Court will hold that at least some employers can discriminate against LGBT individuals for religious reasons. Loss of employment can increase the economic and medical harms that LGBT individuals face.

COVID-19 work-from-home practices have had a mixed effect on LGBT individuals, particularly transgender individuals. Some transgender individuals report relief because teleworking allows them to use their bathroom at home, rather than worry about whether they can use their bathroom of choice at work. But others complain that Zoom is connected to their emails, and therefore uses their “deadnames,” that is, names assigned to them at birth that misgender them. Further, doing business by phone rather than in person also means that some transgender individuals are misgendered as their conversation partner must rely on their voice rather than their appearance (Hensley-Clancy, 2020).

Because of the high degree of economic harms and homelessness LGBT individuals face because of familial rejection and violence, they also rely on government services such as shelters and welfare programs. LGBTQ shelters have reported a significant increases in intake—one D.C. shelter reported a tripling of intake in the first month of the pandemic. But as shelters have to engage in social distancing, many have reduced capacity, leaving LGBT individuals homeless, or only able to go to shelters that engage in discriminatory practices (Velasco & Langness, 2020).

Further, numerous Trump administration agencies have rescinded rules that prevent anti-LGBT discrimination across a range of programs, including shelters, access to healthcare, access to services funded by federal healthcare grants, and the like (Velasco & Langness, 2020). Faith-based service providers, including medical service providers, have claimed religious exemptions to discriminate against same-sex couples. This has involved situations where medical institutions have refused to provide information to same-sex spouses (Goldberg & Wechsler, 2020). Such religious entities might also engage in COVID-19 related care. For example, a field-hospital in New York requested “Christian volunteers,” who would adhere to its Statement of Faith, which

explicitly rejected transgender individuals and marriage equality, as NBC reports.

### Loss of Community Support

LGBT individuals are facing a loss of community support due to COVID-19. The year has seen the endangering of prominent LGBT institutions: the oldest running gay bar in San Francisco has shut down, the country’s third oldest LGBT newspaper is close to closing its doors, and indeed, LGBT pride celebrations around the country were cancelled or held online.

These consequences might seem trivial to outside observers, but are of vital importance to the LGBT community. As one commentator eloquently put it in the Atlantic, “queer gatherings are a rejection of queer isolation: of hiding in the closet, of believing oneself to be alone in one’s identity, of fearing that embracing one’s truth would result in physical harm” (Kornhaber, 2020). Unlike other communities, LGBT individuals must seek out LGBT gathering spaces, such as bars and community support groups, rather than rely on families. Sometimes, this has resulted in LGBT individuals taking risks that have led to contracting COVID-19 and death (Kornhaber, 2020).

With the cancelling of pride celebrations in particular, members of the LGBT community have expressed loneliness. Further, pride celebrations are often key for LGBT organizations to survive. The Center on Colfax—Denver’s LGBT Center—lost around \$1 million from being unable to produce PrideFest—which it would have used to support mental health and legal services. Cummings from the Los Angeles Center, which also provides medical care, housing, and other services, explained that funding sources have dried up, as organizations do not realize the COVID-19 related support these organizations provide. This will further endanger the support that it can provide for the community.

### Harms to Subpopulations

The harms arising from COVID-19 fall disproportionately on LGBT individuals of color and transgender individuals as the figure below lays out. While the figure focuses on economic disparities arising from COVID-19, these disparities appear in other areas. For example, while 12% and 17% of the general population and the LGBT community respectively lack health insurance, those figures jump higher to 22% for transgender individuals, and 32% for transgender individuals of color. This increases their exposure to COVID-19 and secondary harms as laid out above.

### Solutions

Solutions should be adopted at three levels. First, the Trump administration’s decisions to repeal antidiscrimination protections for the LGBT community should be reversed. Indeed, the Supreme Court recently held that discrimination based on transgender status (that is, not conforming to the sex one is assigned by birth) and on sexual orientation (that is, discriminating based on the sex to which an individual is attracted) were both forms of prohibited sex discrimination. While the Court limited its holding to the employment context, its reasoning extends more broadly. For example, the Affordable Care and Fair Housing Acts prohibit sex discrimination in medical contexts and shelters respectively.

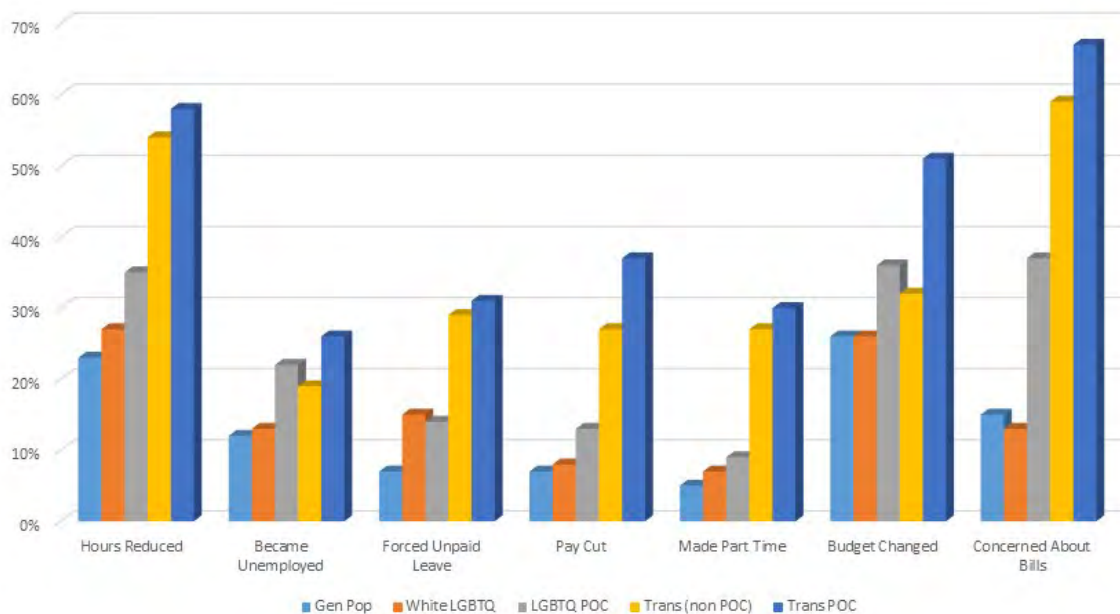


Figure 32.1: Effects of COVID-19 on LGBT Subpopulations. Source Human Rights Campaign Foundation (2020b and 2020c).

Agencies must recognize this legal change promptly, and Congress should exercise its oversight power to make sure that they do so.

Secondly, states and federal entities should provide assistance targeted towards LGBT individuals and organizations that are foundering at this time. Assisting LGBT organizations is vital for a group of individuals who may lack familial support. Importantly, LGBT organizations may lack access to paycheck protection program funding, and do not get access to funding directed to organizations providing COVID-19 support. But LGBT individuals are most likely to get supportive and non-discriminatory care at these LGBT organizations, and thus are likely to go to these organizations for relief. These organizations have historically provided gathering places for LGBT youth and elders; they should be well-resourced as they shift to changing the way in which they provide services. Rather than try to reinvent the wheel, policymakers should deputize these organizations for providing community services.

Targeted assistance should also involve data collection on LGBT individuals at times of COVID-19 testing, and in providing other services, so that we can better understand community needs. So far, Pennsylvania is the only state to require such testing. Similar legislation is expected to pass in California. Other states and the federal government should take similar steps. (Lang, 2020).

Further, the government should provide advice and services with an eye to LGBT individuals. For example, state and local governments should ensure that HIV testing and gender confirmation treatment remain available even during times of shelter-at-home. Further, they should not require identification for accessing services, as transgender individuals might have identification that misgenders them, and does not conform to their appearance, which may result in a denial of services.

Third, given the economically precarious state of LGBT individuals, measures that would provide assistance to vulnerable communities

in general, including medical, food, and shelter assistance, as detailed elsewhere in this report, would help LGBT individuals as well (Gruberg, 2020).

## Conclusion

LGBT individuals have been more likely to take steps to limit the spread of COVID—for example, 54% of the community is avoiding public transportation, 53% have purchased masks, and 27% have spoken to a doctor about the virus, compared to 44%, 43%, and 14% of the general population respectively (Human Rights Campaign Foundation, 2020d).

We should now take steps to actively support and include the community. An inclusive approach can help control COVID-19 more generally. For example, in light of blood shortages caused by the crisis, the FDA took steps to limit its rule that prohibited most MSM from giving blood. But MSM remain excluded if they have had a sexual encounter with any other man in the previous three months. Apart from imposing stigma on members of the LGBT community, such a ban harms the COVID-19 relief effort. Similarly, discrimination in healthcare settings makes it less likely that LGBT individuals will go in for testing, or if they do, that they will candidly engage in discussions regarding contact tracing that may out them to providers who do not know they are LGBT.

Members of the LGBT community survived the AIDS epidemic by relying on each other, by using protection to protect each other, and by taking community action without relying on the federal government. Drawing from these community norms by adopting LGBT-inclusive policies can teach us ways to bring COVID-19 under control as well. 🌟



# Recommendations for Action

## Federal government:

- Congress should ensure that organizations that provide direct relief and services, including LGBT organizations, are eligible for funding under CARES Act and future emergency support measures.
- Consistent with the Supreme Court's recent decision in *Bostock v. Clayton County*, HHS should issue a regulation affirming that Section 1557 of the Affordable Care Act prohibits discrimination based on sexual orientation and gender identity.
- Consistent with the Supreme Court's recent decision in *Bostock v. Clayton County*, HUD should withdraw its proposed rule reversing the Obama Administration's Equal Access Rule, which required that Housing and Urban Department programs, including certain shelters, were open to all eligible families and individuals "without regard to actual or perceived sexual orientation, gender identity, or marital status."
- HHS, DOJ, and other relevant agencies should clarify that the Religious Freedom Restoration Act and other religion-related protections do not justify discrimination against LGBT individuals.
- FDA should remove all vestiges of its ban on blood donation by men who have sex with men from its blood donation guidance, so that the LGBT community is not excluded from assisting in the COVID-19 relief effort.
- Congress should pass additional legislation along the lines of the CARES Act that expands measures that assist lower income individuals, including food stamp, unemployment, and related benefits.
- CDC should collect (and ask state and local agencies to collect) data regarding individuals' sexual orientation and gender identity. This

may, in part, be modeled on data collection in the National Health Interview Survey.

## State governments:

- The appropriate state agencies and legislatures should fund community organizations including LGBT community centers, and ensure they are subject to protection against evictions and rent increases.
- State attorneys general should clarify that sex discrimination prohibitions in public accommodation discrimination, present in all 50 states, prohibit discrimination based on sexual orientation and gender identity, to ensure that LGBT individuals have access to essential services.
- The appropriate state agencies and legislatures should increase funding and support for homeless shelters, especially shelters dedicated to LGBT groups.
- The appropriate state entities should carry out Medicaid expansion.
- Governors and other authorized officers should clarify in emergency orders that LGBT focused services—including access to HIV medication and gender confirmation services—remain essential.
- State departments of education and school boards should require schools to provide support services via Zoom and other online outlets for LGBT students.
- State health departments should follow the lead of Pennsylvania and California in collecting data on sexual orientation and gender identity.

## Local governments:

- Local agencies such as local school boards or public health departments should create safe virtual spaces and facilities for LGBT young people and seniors to engage with each other.
- Local health departments should develop programs that offer support to LGBT seniors.
- Local health departments should, where possible, rely on services and contracting with organizations that do not maintain moral or religious beliefs that promote sexual orientation or gender identity discrimination.
- Local health departments should provide resources such as COVID tests and the like to LGBT community centers.



## About the Author

**Professor Craig J. Konnoth** teaches health law and LGBT rights at the University of Colorado School of Law where he also runs the health law program. His publications span health law and LGBT rights and have or will appear in the Harvard Law Review, the Yale Law Journal, and the Stanford Law Review, among others. He has filed several briefs in the U.S. Supreme Court on LGBT rights. He was California's Deputy Solicitor General, and worked at the Williams Institute at UCLA Law School, whose research on sexual orientation and gender identity is regularly relied on by policymakers and courts.

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