

REPORT 1 OF THE COUNCIL ON SCIENCE AND PUBLIC HEALTH (I-09)
Health Care Disparities in Same-Sex Households
(Reference Committee K)

EXECUTIVE SUMMARY

Objective. This report: (1) reviews the legal definitions relevant to same-sex unions in the United States; (2) examines health care disparities affecting same-sex households; and (3) evaluates the effect that exclusion from civil marriage to a same-sex partner may have on these dynamics.

Data Sources. English-language reports on studies using human subjects were selected from a PubMed search of the literature from 1990 to August 2009 using the MeSH terms “homosexuality” “(male or female),” “marriage/*legislation & jurisprudence,” *family characteristics,” “parent-child relations,” “healthcare disparities,” and “health policy.” Additional articles were identified by manual review of the references cited in these publications. Web sites of the Human Rights Campaign, the Gay and Lesbian Medical Association, the Institute for Gay and Lesbian Strategic Studies, Lambda Legal, National Center for Lesbian Rights, Williams Institute, National Conference on State Legislatures, Kaiser Family Foundation, and the Employee Benefit Research Institute also were searched for relevant resources. Members of the AMA Advisory Committee on Gay, Lesbian, Bisexual, and Transgender Issues also were consulted for relevant background information.

Results. The federal government defines marriage as “a legal union between one man and one woman as husband and wife” and spouse as “only...a person of the opposite sex who is a husband or a wife.” At least 1138 statutory provisions confer rights to spouses and dependent children based on federal recognition of civil marriage. Forty-one states have statutes defining marriage as between one man and one woman, and thirty have constitutional language defining marriage; six states currently recognize, or will soon recognize same-sex marriages. Based on census and survey data, approximately 1% of the households in the U.S. are same-sex households.

Marriage is a strong predictor of health insurance in the U.S. Women, in particular, in same-sex households are significantly less likely than women in opposite sex relationships to have health insurance coverage. Same-sex households also do not experience the tax benefits for health insurance premiums, and lack the protection afforded married couples under COBRA and FMLA. Several other federal benefits that affect the socioeconomic status of the household are not available to same-sex households including parenting-related federal income tax breaks, spousal benefits under retirement plans, social security survivor benefits, and long term care. Children in same-sex households may be disadvantaged because of barriers to coparent or second parent adoption.

Conclusions. Many of the statutory advantages enjoyed by married partners are financial, including those derived from tax laws, employee benefits, inheritance, insurance and survivorship rights, and entitlement programs. Some benefits, such as access to employer-based health insurance and the authority to make medical decisions on behalf of a spouse, have more direct implications for health care access and delivery of care. Survey data confirm that same-sex households have less access to health insurance. If they have health insurance, they pay more than married heterosexual workers, and also lack other financial protections. Additionally, both provider and patient-based barriers to health care access and culturally competent care for gay and lesbian individuals continue to exist, and children in same-sex households lack the same protections afforded children in heterosexual households.

REPORT OF THE COUNCIL ON SCIENCE AND PUBLIC HEALTH

CSAPH Report 1-I-09

Subject: Health Care Disparities in Same-Sex Partner Households

Presented by: C. Alvin Head, MD, Chair

Referred to: Reference Committee K
(Peter C. Amadio, MD, Chair)

1 INTRODUCTION

2
3 Resolution 522 (A-08), introduced by the Wisconsin Delegation and the American Academy of
4 Pediatrics and adopted (with a title change) at the 2008 Annual Meeting, asked that our American
5 Medical Association (AMA) evaluate existing data concerning same-sex couples and their
6 dependent children and determine whether health care disparities exist for these couples and
7 children because of their exclusion from civil marriage.

8
9 The pursuit of legally-recognized marriage for same-sex couples is a relatively recent phenomenon
10 and remains a divisive topic. Same-sex marriage has been principally framed by advocates as a
11 human rights issue, and also supported on the belief that marriage promotes physical well-being
12 and mental health.¹⁻³ This report: (1) reviews the legal definitions relevant to same-sex unions in
13 the United States; (2) examines health care disparities affecting same-sex households; and (3)
14 evaluates the effect that exclusion from civil marriage to a same-sex partner may have on these
15 dynamics. Related policy statements of Federation members also are summarized.

16
17 Although germane to the overall topic of same-sex marriage, this report does not review the
18 psychosocial qualities of same-sex relationships and the context they provide for rearing healthy
19 and well-adjusted children. Gay and lesbian couples in the United States function in an often
20 hostile social environment that lacks a normative and legal template for establishing their status,
21 and they often experience less support from family members and community institutions than their
22 married heterosexual counterparts.^{2,4,5} However, the emotional qualities contributing to satisfaction
23 and stability in same-sex relationships are similar to those found in heterosexual relationships, and
24 same-sex couples are comparable to heterosexual couples on standardized measures of relationship
25 satisfaction.⁶⁻¹⁰ Nevertheless, because civil marriage is not generally available for same-sex
26 couples, more research on the implications of same-sex marriage for gay and lesbian individuals is
27 needed.^{11,12} Finally, although considerably more research has been done on lesbian households,
28 most reviews support the view that children raised in same-sex households display emotional,
29 psychosocial, and behavioral adjustments comparable to children raised in heterosexual
30 households.¹³⁻¹⁶

31
32 Although the broader issues surrounding same-sex marriage are not covered in depth in this report,
33 the Council acknowledges that the inherent characteristics and qualities of committed same-sex
34 relationships and the parenting ability of gay and lesbian partners should not be considered
35 fundamental barriers to legal recognition of same-sex marriage. Finally, it is important to note that
36 although the term “same-sex” connotes a homogenous group, the characteristics and behaviors of
37 gay versus lesbian-partnered relationships differ qualitatively, and (like heterosexual ones) vary
38 based on location (urban vs. rural), religion, race and ethnicity, and socioeconomic status.

1 METHODS

2
 3 English-language reports on studies using human subjects were selected from a PubMed search of
 4 the literature from 1990 to August 2009 using the MeSH terms “homosexuality” “(male or
 5 female),” “marriage/*legislation & jurisprudence,” *family characteristics,” “parent-child
 6 relations,” “healthcare disparities,” and “health policy.” Additional articles were identified by
 7 manual review of the references cited in these publications. Web sites of the Human Rights
 8 Campaign, the Gay and Lesbian Medical Association, the Institute for Gay and Lesbian Strategic
 9 Studies, Lambda Legal, National Center for Lesbian Rights, Williams Institute, National Conference
 10 on State Legislatures, Kaiser Family Foundation, and the Employee Benefit Research Institute also
 11 were searched for relevant resources. Members of the AMA Advisory Committee on Gay,
 12 Lesbian, Bisexual, and Transgender Issues also were consulted for relevant background
 13 information.

14
 15 LEGAL HOUSEHOLD RELATIONSHIPS

16
 17 *Civil Marriage*

18
 19 Civil marriage in the United States is a legal status established through a state-issued license
 20 granting certain legal rights and obligations to two individuals. Civil marriage has been described
 21 as providing a “context for legal, financial, and psychosocial well-being, an endorsement of
 22 interdependent care, and a form of public acknowledgement and respect for personal bonds.”¹³
 23 Judges, other public officials, and clergy are authorized to establish civil marriages. Religious
 24 marriage is a rite conducted according to the rules and requirements of the religious organization.
 25 Although religious ceremonies vary, their authority to establish civil marriage emanates from the
 26 state, not the religious group.

27
 28 Defense of Marriage Act. Congress enacted the Defense of Marriage Act (DOMA) in 1996.¹⁷
 29 DOMA defines *marriage* as “a legal union between one man and one woman as husband and wife”
 30 and *spouse* as “only...a person of the opposite sex who is a husband or a wife.” DOMA also
 31 granted states the ability to not recognize same-sex marriages enacted in other states. Accordingly,
 32 forty-one states have statutes defining marriage as between one man and one woman, and thirty
 33 have constitutional language defining marriage.²¹ Normally, under the “Full Faith and Credit
 34 Clause” of the United States Constitution, states are required to recognize and honor the public
 35 laws of other states.²⁰

36
 37 The Act affects the interpretation and application of federal laws in which marital status is a factor.
 38 Several categories exist including: (1) social security and related programs; (2) housing and food
 39 stamps; (3) the internal revenue service (IRS) code; (4) federal civilian and military service
 40 benefits; (5) employment benefits (6) immigration and nationality status; (7) trade, commerce, and
 41 intellectual property; (8) remedies and protections for crimes and family violence; and (9) certain
 42 loans and other financial guarantees. The General Accounting Office identified 1138 statutory
 43 provisions that confer rights to spouses and dependent children based on federal recognition of
 44 civil marriage.¹⁸

45
 46 States Recognizing Same-Sex Marriage. Three states (Massachusetts, Connecticut, Iowa) extend
 47 state-level rights and benefits of marriage to same-sex couples, and three others (Vermont, Maine,
 48 New Hampshire) have passed same-sex marriage statutes scheduled to take effect between
 49 September 2009 and January 1, 2010.¹⁹ California allowed same-sex marriage for a period of time
 50 in 2008 until a ballot initiative (Proposition 8) was approved limiting marriage to one man and one
 51 woman.

1 *Civil Union*

2
3 A civil union is a legal status extending state-based benefits, protections, and responsibilities that
4 are granted during marriage, to same-sex couples. Civil unions are not reciprocally recognized in
5 most states nor by the federal government. States allowing civil unions include New Jersey and
6 New Hampshire.^{22,23} Some states that previously legalized civil unions have subsequently
7 legalized same sex marriages. Vermont will continue to recognize already established civil unions,
8 whereas New Hampshire established a grace period to convert civil unions to marriages.
9

10 *Domestic Partnerships*

11
12 A domestic partnership is a legally recognized partnership between two individuals who may or
13 may not be of the same sex; benefits vary by jurisdiction. They do not provide the same degree of
14 protection as civil unions, and also do not confer federal rights, benefits, or protections. Domestic
15 partnership laws are state-, community-, or employer specific, and therefore are not “portable.”
16 Several states currently offer domestic partnership benefits.²³ Some (California, Oregon,
17 Washington) provide nearly all state-level spousal rights to unmarried couples in domestic
18 partnerships, whereas others (Hawaii, Maine, District of Columbia) are more limited in their extent.
19 At least 6 other states offer domestic partner benefits to state-level employees.²³
20

21 Approximately 57% of Fortune 500 companies offer domestic partner benefits.²⁴ Overall, 36% of
22 employers surveyed by the Society for Human Resource Management offered domestic partner
23 benefits to same-sex partners, more often in large companies (>500 employees) and in publicly-
24 owned, for-profit organizations. More than 9,000 companies and organizations currently offer
25 domestic partner benefits. Several other cities and counties also maintain domestic partner
26 registries.²⁵ According to data compiled by the Williams Institute at UCLA Law School, as of
27 2009, roughly one-third of the same-sex couples in the United States resided in a jurisdiction
28 offering them some form of state-level recognition of their relationships.²⁵
29

30 *Demographics of Same Sex Households*

31
32 2000 Census. The 2000 Census surveyed relationships in two broad categories—related persons
33 (e.g., husband/wife, son/daughter) and unrelated persons (e.g., unmarried partner; roomer/boarder).
34 If the household responder designated another adult of the same sex as his or her “husband/wife” or
35 “unmarried partner,” the Census classified this household as a “same-sex, unmarried partner
36 couple.” Using this method, same-sex households accounted for 0.6% of all households captured
37 by the 2000 Census, and were recorded in 96% of counties in the U.S.²⁶ In households that were
38 classified as same-sex, approximately 34% of female couples and 22% of male couples were
39 raising children in the United States in 2000.²⁶
40

41 For a variety of reasons, the 2000 Census probably underestimated the actual number of same-sex
42 households. Undercount projections vary from 16% to 62%, in which case the prevalence of same-
43 sex households in the U.S. may approach 1%.²⁷
44

45 California Survey Data. California contains more same-sex households than any other state. As
46 noted above, California also offers domestic partnership benefits. Based on independent,
47 population-based telephone surveys conducted biannually from 2001 to 2005 and the use of adult
48 self reports, 37% to 46% of gay men, and 51% to 62% of lesbians aged 18 to 59 are in cohabitating
49 partnerships, and are more likely to be white and highly educated. Approximately half of these
50 lesbian couples are officially registered as domestic partners with the local or state governments,
51 while less than 25% of gay couples are officially registered.²⁸ The fact that more lesbian couples

1 are registered is consistent with the experience in states that have legalized marriage or civil
2 unions. In such states, lesbians account for two-thirds of such legalized entities.

3
4 National Health Interview Survey. The National Health Interview Survey (NHIS) collects
5 information on health behaviors and health care access among the civilian, non-institutionalized
6 population in the United States.²⁹ Among adults 18 to 64 years of age who were living with a
7 spouse or partner between 1997 and 2003, 0.65% reported they were involved in a same-sex
8 relationship, and 99.35% reported they were involved in an opposite sex relationship. This
9 percentage of same-sex couples (0.6%) is similar to the percentage reported in the rudimentary
10 2000 Census data.

11 12 AMA POLICY

13
14 Our AMA has extensive policy (Appendix A) supporting equal treatment and elimination of
15 discriminatory practices for the gay and lesbian population and for reducing health disparities
16 affecting sexual minorities. Specifically, our AMA: (1) supports adoption of a child by same-sex
17 partners; (2) opposes discrimination based on sexual orientation or gender identity, and supports
18 inclusion of “sexual orientation, sex, or gender identity” in nondiscrimination statements; (3)
19 supports better physician education, improved workforce diversity, and cultural competence and
20 training in managing the health care needs of gay men and lesbians; (4) supports providing same-
21 sex couples and their dependent children the same hospital visitation privileges accorded married
22 couples; (5) opposes denying health insurance on the basis of sexual orientation or gender identity;
23 and (6) supports equality in laws affecting health care of members in same-sex partner households
24 and their dependent children.

25 26 *Federation Members*

27
28 The American Academy of Pediatrics, American Academy of Family Physicians, American
29 College of Obstetricians and Gynecologists, American Academy of Child and Adolescent
30 Psychiatry, and the American Psychiatric Association have endorsed various policy statements on
31 same-sex marriage, and the legal status and privileges that should be accorded same-sex couples,
32 including adoption rights (see Appendix B).³⁰⁻³⁴

33 34 HEALTH DISPARITIES AFFECTING GAY MEN AND LESBIANS

35
36 Health disparities are differences in the incidence, prevalence, mortality, burden of diseases and
37 other adverse health conditions or outcomes that exist among specific population groups in the
38 United States. The Council previously addressed optimizing medical care for gay men and
39 lesbians.³⁵ Gay men and lesbians have many of the same health issues as their heterosexual
40 counterparts, but also have certain unique conditions related either to sexual or other disease risk
41 factors or to less frequent use of preventive services. Gay men and lesbians are disproportionately
42 at risk for sexually transmitted diseases, mental health disorders including substance misuse, and
43 certain cancers.³⁵

44
45 Thus, it is already established that gay men and lesbians experience a range of health disparities.
46 As noted in the previous Council report, studies involving gay and lesbian health are limited by
47 selection bias and the use of sexual orientation *per se* as the variable. None of the studies reviewed
48 in the previous Council report on health disparities in gay men and lesbians controlled for the
49 concurrent existence of a legal partnership status, including state-sanctioned marriage.

50

1 HEALTH CARE DISPARITIES AFFECTING SAME SEX HOUSEHOLDS

2
3 In contrast to health disparities, Resolution 522 (A-08) seeks to determine whether same-sex
4 couples and their dependent children experience *health care disparities* because of their exclusion
5 from civil marriage. Health care disparities are the differences or gaps in care experienced by one
6 population compared with another population.

7
8 Gay men and lesbians encounter barriers to accessing care or experience gaps in care clustering
9 around 4 main issues:^{35,36} (1) reluctance of some gay and lesbian individuals to disclose their sexual
10 identity, in part because of fear of negative reactions; (2) insufficient numbers of physicians who
11 feel competent to provide care; (3) barriers emanating from lack of financial resources, lack of
12 insurance, or impediments that limit visiting and medical decision-making rights for gays and
13 lesbians and their partners; and (4) lack of culturally appropriate prevention services. Thus, within
14 the scope of health care delivery, health care disparities can be due to differences in access to care,
15 provider biases, poor provider-patient communication, poor health literacy, and other factors. The
16 importance of health care access as a component of overall health status is illustrated by its
17 inclusion as one of the 10 leading health indicators in Healthy People 2010. Access to care
18 involves not only geographic availability of quality health services but also financial, social,
19 cultural, and structural issues.

20
21 The following discussion evaluates how the institution of marriage provides certain benefits related
22 to health care delivery, and how the inability to form such legally recognized relationships with a
23 same-sex partner impacts health care disparities.

24 25 *Health Insurance*

26
27 Health insurance is the most important factor in determining access, and the receipt of timely and
28 appropriate health care for residents of the United States.³⁷ Uninsured adults, regardless of their
29 sexual orientation, and uninsured children are far less likely to receive the health care they need.
30 Health care access also is influenced by employment status, education, race/ethnicity, age,
31 socioeconomic status, and location of residence.

32
33 Effect of Marriage. Marriage is a strong predictor of health insurance coverage in the United
34 States. Nationwide, people who have never been married (27%) and those who are living with a
35 partner (32%) are more likely to be uninsured than those who are married (13%).³⁸ Currently,
36 approximately 62% of individuals under the age of 65 are insured through their employer, and 19%
37 rely on public benefits.³⁹ Employer-sponsored insurance covers almost two-thirds of women
38 between the ages of 18 and 64, but women are less likely to be insured through their own job than
39 are men (39% vs 49%, respectively), and also are twice as likely as men to be insured through
40 another person (25% vs 13%).⁴⁰

41
42 Most employer sponsored health plans extend coverage to the married spouses and children of their
43 employees. Although more companies are offering domestic partnership benefits to unmarried
44 individuals, the majority of employers do not provide this option. If a working gay or lesbian
45 parent cannot establish a legal relationship to the child, the child also is more likely to be
46 uninsured.

47
48 Among adults 18 to 64 years of age who were surveyed and living with a spouse or partner
49 between 1997 and 2003, women in same-sex households were significantly less likely than women
50 in opposite sex relationships to: (1) have health insurance coverage; (2) have seen a health care
51 provider in the previous 12 months; and (3) have an established, usual source of health care. This

1 survey however demonstrated a difference between lesbian and gay couples in that health care
2 access among men in same-sex households was at least equivalent to that among men in opposite
3 sex relationships.²⁹

4
5 The Current Population Survey (CPS) is a monthly household survey conducted by the Census
6 Bureau, and is the primary source of information on the labor force characteristics of the U.S.
7 population. The Annual Social and Economic Supplement to the CPS is conducted each March
8 and includes detailed questions about health insurance coverage, as well as partner relationships
9 from 60,000 households. Pooled data of this survey from 1996 to 2003 indicate that gay and
10 lesbian partners were twice as likely to be uninsured as married people.⁴¹

11
12 Taxation on Employer-Provided Health Insurance Premiums. Employee-sponsored domestic
13 partner benefits, unlike health benefits provided to married heterosexual couples, are taxed as
14 income. This may affect the ability of some same-sex households to afford domestic partner-based
15 coverage and coverage for their children.

16
17 Continuation of Health Coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985
18 (COBRA) requires most employers with group health plans to offer employees the opportunity to
19 temporarily continue their group health care coverage under their employer's plan if their coverage
20 otherwise would cease due to termination, layoff, or other change in employment status (referred to
21 as "qualifying events"). When a gay or lesbian employee loses or leaves a job, federal law does not
22 guarantee the employee the opportunity to purchase continuing health coverage for an unmarried
23 partner, even if the employer-sponsored plan originally covered the partner. Employers are only
24 required to offer continuation coverage to the employee and to "qualified beneficiaries," defined as
25 the employee's spouse and dependent children. However, nothing prevents an employer from
26 extending COBRA benefits to domestic partners, and employers may choose to extend such
27 benefits of their own accord. This can result in discrimination against both the same sex partner
28 and dependent children, if the employer chooses not to extend these benefits.

29
30 Family and Medical Leave Act. As currently interpreted, the Family and Medical Leave Act does
31 not provide leave to care for a domestic partner or child in the domestic partner's family. This has
32 potential implications for the care of the child (i.e., maternity/paternity leave; one partner is
33 hospitalized and the other must care for children at home), as well as potential financial
34 consequences in terms of job security.

35
36 In summary, less access to health insurance, the lack of tax benefits for health insurance premiums,
37 and loss of protections offered married couples under COBRA and FMLA contribute to health care
38 disparities for same-sex households.

39 40 *Financial Implications of Marriage*

41
42 The socioeconomic status of the household has direct implications for health care access. The
43 following federal benefits are extended only to married couples and have implications for financial
44 security.

45
46 Federal Income Tax. The impact of parenting-related federal income tax depends on the working
47 status of both parents. In general, IRS regulations negatively affect tax burdens in same-sex
48 households when one parent stays at home, whether or not that parent has a legal relationship with
49 the child. If both same-sex parents work, the tax burden may be less than heterosexual couples
50 depending on the combined income. These principles apply assuming the married heterosexual
51 couple files as "married filing jointly" and in the same-sex household the "income earner" files as

1 head of household, and the other parent files as single. The actual impact will depend on the
2 number of children, and eligibility for dependent exemptions, child tax credits, dependent and child
3 care tax credits, and earned income tax credits. The greatest impact occurs when only the stay-at-
4 home parent has a legal relationship to the children. For example, under these circumstances with
5 two children and a family earning \$60,000, if a married heterosexual couple owed ~\$2500 in
6 federal income tax, the comparable same-sex household would owe ~\$7000. Other tax situations
7 that can result in significant financial penalties for same-sex households are the gain from sale of
8 the taxpayer's principal residence and estate taxes.

9
10 Retirement Plans. Although defined-benefit pension plans are increasingly scarce, partners in
11 same-sex households do not receive the same legal and financial protections as do married spouses.
12 The latter are entitled to the accumulated value of defined benefit plans (or a certain percentage
13 based on the plan description) which can be rolled-over into an IRA without tax consequences if
14 the spouse dies. Some, but not all defined benefit pension plans allow for the accumulated value to
15 be distributed to a named nonspouse beneficiary, but the tax protections afforded rollovers of these
16 distributions are available only to a legal spouse.⁴² The same penalty (20% federal withholding
17 tax) holds true for 401(k) plans if the surviving named beneficiary is a same-sex partner.

18
19 Social Security Survivor Benefits. Social Security survivor benefits are made available to
20 surviving spouses and children. When a gay or lesbian parent dies, the loss of Social Security
21 benefits to children and a surviving partner can be substantial. For example, when a spouse who
22 earned \$60,000 dies and leaves behind a 10-year old child, approximately \$240,000 in benefits are
23 available to the child and surviving parent in a civil marriage.⁴² A surviving gay or lesbian partner
24 is in all cases deprived of benefits available to surviving spouse. Surviving children also are
25 deprived of benefits if the deceased parent was unable to establish a legal relationship with the
26 child.

27
28 Long Term Care. Individuals without long term care coverage who end up in nursing homes may
29 be required to spend all of their assets on care, and then apply for Medicaid when resources are
30 depleted (i.e., Medicaid "spend down"). Medicaid regulations allow one member of a married
31 couple to remain in the couple's home for the rest of his or her life without jeopardizing the
32 spouse's right to nursing home coverage. Same-sex partners are not covered under this provision,
33 and therefore are at risk of more rapid depletion of available financial resources, including the
34 value of the home.⁴³

35
36 Immigration. More than one out of 10 same-sex couples raising children includes at least one
37 parent who was born outside of the United States. American citizens or permanent residents are
38 not permitted to petition for their same-sex partners to immigrate. This lack of protection places
39 some same-sex households at risk of being broken up or forced to move to another country,
40 although no data is available on the extent of this practice.

41
42 The variables noted above affecting income and financial security, as well as long term care are
43 especially relevant for senior gay men and lesbians.⁴³ Nearly two-thirds of U.S. retirees rely on
44 Social Security for more than half of their annual income; for 15% of retirees Social Security is
45 their only source of income. Although specific studies of how the loss of the financial benefits
46 described in this section contributes to health care disparities for same-sex households have not
47 been conducted, their loss is relevant to the extent financial variables affect health care disparities.
48

1 *Children in Same Sex Households*

2
3 Various pathways to parenthood exist in same-sex households, including custody of children from
4 previous civil marriages, the use of surrogate mothers, foster care, adoption, and for lesbian
5 women, artificial insemination. Coparent adoption is a legal process that allows both parents to
6 adopt a child at the same time. Second parent adoption is a process whereby the partner of the
7 biological or primary adoptive parent is allowed to adopt at a later time.

8
9 Adoption. Only eleven states and the District of Columbia guarantee that same-sex parents can
10 jointly establish themselves as the legal parents of children living in the household; in two states
11 (Nevada and New Hampshire) same-sex couples have successfully petitioned to jointly adopt in
12 some jurisdictions.⁴³ Ten states and the District of Columbia provide second-parent adoption as an
13 option for same-sex couples, and as many as 15 states have allowed second-parent adoption in
14 some jurisdictions. Overall, approximately two-thirds of children being raised by same-sex parents
15 nationwide live in states that do not guarantee the right of both parents to establish a legal
16 relationship with the child via second parent or joint adoption.⁴⁴

17
18 When joint or second parent adoption is not available, both parents cannot authorize medical
19 treatment in an emergency. If same-sex parents can access a jurisdiction that authorizes joint or
20 second parent adoptions, medical consequences may be mitigated, however adoption is constrained
21 in several states by residency requirements. When adoption by same-sex parents is successful,
22 other states must recognize its validity, even if the state has a statute expressly prohibiting such a
23 practice. If a medical emergency involving the adopted child of a same-sex household occurs in a
24 state where such adoptions are not legal, the right of both parents to authorize medical treatment
25 would have to be recognized. Failure to do so may result in liability exposure for the health care
26 provider or organization that failed to recognize the adoptive parent's ability to authorize treatment
27 in the case of an emergency.

28
29 **CONCLUSION**

30
31 In the United States, civil marriage (as defined by the federal government) is recognized across
32 state and national borders. State-authorized same-sex civil marriages, civil unions, and domestic
33 partnerships are not accorded the same status.

34
35 Many of the statutory advantages enjoyed by married partners are financial, including those
36 derived from tax laws, employee benefits, inheritance, insurance and survivorship rights, and
37 entitlement programs.⁴ Some benefits, such as access to employer-based health insurance and the
38 authority to make medical decisions on behalf of a spouse, have more direct implications for health
39 care access and delivery of care. Access to civil marriage is an opportunity for gay men and
40 lesbians to receive increased legal and financial protections, parental rights, and the potential for
41 enhanced social and extended family support. Recent survey data from Massachusetts where
42 same-sex marriages have existed since 2004 show that marriage has been perceived as a positive
43 factor in these areas.⁴⁵ For example, 85% of same-sex married couples listed legal recognition as
44 one of their main motivations for marrying; 70% felt more accepted by their communities; 48%
45 reported less worry about legal problems; 89% reported that all or most family members supported
46 their marriage; 93% reported their children were happier as a result of their marriage; and 83%
47 reported they were now more likely to confide in their healthcare providers. Although a subjective
48 bias in favor of the positive effects of same-sex marriage would be anticipated, this study offers an
49 example of how the opportunity for same-sex marriage may be expected to decrease health care
50 disparities resulting from social, attitudinal, and financial issues described above.

1 Health care disparities experienced by gay and lesbian families are multifaceted, and therefore it is
2 difficult to empirically examine the specific effects that governmental prohibition of same-sex
3 marriage has on such disparities. However, it is somewhat self-evident that marriage, as a package
4 of numerous financial and social benefits, creates a *de facto* health care disparity between married
5 and unmarried populations. Survey data confirm that same-sex households have less access to
6 health insurance. If they have health insurance, they pay more than married heterosexual workers,
7 and also lack other financial protections. Additionally, both provider and patient-based barriers to
8 health care access and culturally competent care for gay and lesbian individuals continue to exist,
9 and children in same-sex households lack the same protections afforded children in heterosexual
10 households.

11

12 RECOMMENDATIONS

13

14 The Council on Science and Public Health recommends that the following statements be adopted
15 and the remainder of the report be filed:

16

17 1. That our American Medical Association (AMA):

18

19 a) recognize that exclusion from civil marriage contributes to health care disparities affecting
20 same-sex households;

21

22 b) work to reduce health care disparities among members of same-sex households including
23 minor children; and

24

25 c) support measures providing same-sex households with the same rights and privileges to
26 health care, health insurance, and survivor benefits, as afforded opposite-sex households.
27 (New HOD Policy)

28

29 2. That our AMA rescind Policy D-160.979 "Health Care Disparities in Same-Sex Partner
30 Households." (Rescind HOD Policy)

Fiscal Note: Less than \$500

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Appendix A
AMA Policies Relevant to Same Sex Households

H-60.940 Partner Co-Adoption

Our AMA will support legislative and other efforts to allow the adoption of a child by the same-sex partner, or opposite sex non-married partner, who functions as a second parent or co-parent to that child. (Res. 204, A-04)

H-65.976 Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population

Our AMA encourages physician practices, medical schools, hospitals, and clinics to broaden any nondiscriminatory statement made to patients, health care workers, or employees to include "sexual orientation, sex, or gender identity" in any nondiscrimination statement. (Res. 414, A-04; Modified: BOT Rep. 11, A-07)

H-65.983 Nondiscrimination Policy

The AMA affirms that it has not been its policy now or in the past to discriminate with regard to sexual orientation or gender identity. (Res. 1, A-93; Reaffirmed: CCB Rep. 6, A-03; Modified: BOT Rep. 11, A-07)

H-65.992 Continued Support of Human Rights and Freedom

Our AMA continues (1) to support the dignity of the individual, human rights and the sanctity of human life, and (2) to oppose any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age and any other such reprehensible policies. (Sub. Res. 107, A-85; Modified by CLRPD Rep. 2, I-95; Reaffirmation A-00; Reaffirmation A-05; Modified: BOT Rep. 11, A-07)

H-160.991 Health Care Needs of the Homosexual Population

1. Our AMA: (a) believes that the physician's nonjudgmental recognition of sexual orientation and behavior enhances the ability to render optimal patient care in health as well as in illness. In the case of the homosexual patient this is especially true, since unrecognized homosexuality by the physician or the patient's reluctance to report his or her sexual orientation and behavior can lead to failure to screen, diagnose, or treat important medical problems. With the help of the gay and lesbian community and through a cooperative effort between physician and the homosexual patient effective progress can be made in treating the medical needs of this particular segment of the population; (b) is committed to taking a leadership role in: (i) educating physicians on the current state of research in and knowledge of homosexuality and the need to take an adequate sexual history; these efforts should start in medical school, but must also be a part of continuing medical education; (ii) educating physicians to recognize the physical and psychological needs of their homosexual patients; (iii) encouraging the development of educational programs for homosexuals to acquaint them with the diseases for which they are at risk; (iv) encouraging physicians to seek out local or national experts in the health care needs of gay men and lesbians so that all physicians will achieve a better understanding of the medical needs of this population; and (v) working with the gay and lesbian community to offer physicians the opportunity to better understand the medical needs of homosexual and bisexual patients; and (c) opposes, the use of "reparative" or "conversion" therapy that is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that the patient should change his/her homosexual orientation. 2. Our AMA will (a) educate physicians regarding: (i) the need for women who have sex exclusively with women to undergo regular cancer and sexually transmitted infection screenings due to their comparable or elevated risk for these conditions; and (ii) the need for comprehensive screening for sexually transmitted diseases in men who have sex with men; and (b) support our partner medical organizations in educating women who have sex exclusively with women on the need for regular cancer screening exams, the risk for sexually transmitted infections, and the appropriate safe sex techniques to avoid that risk. 3. Our AMA will use the results of the survey being conducted in collaboration with the Gay and Lesbian Medical Association to serve as a needs assessment in developing such tools and online continuing medical education (CME) programs with the goal of increasing physician competency on gay, lesbian, bisexual, and transgender health issues. 4. Our AMA will continue to explore opportunities to collaborate with other organizations, focusing on issues of mutual concern in order to provide the most comprehensive and up-to-date education and information to physicians to enable the provision of high quality and culturally competent care to gay men and lesbians. (CSA Rep. C, I-81; Reaffirmed: CLRPD Rep.

F, I-91; CSA Rep. 8 - I-94; Appended: Res. 506, A-00; Modified and Reaffirmed: Res. 501, A-07; Modified: CSAPH Rep. 9, A-08)

H-180.980 Sexual Orientation and/or Gender Identity as Health Insurance Criteria

The AMA opposes the denial of health insurance on the basis of sexual orientation or gender identity. (Res. 178, A-88; Reaffirmed: Sub. Res. 101, I-97; Reaffirmed: CMS Rep. 9, A-07; Modified: BOT Rep. 11, A-07)

H-200.951 Strategies for Enhancing Diversity in the Physician Workforce

Our AMA supports increased diversity across all specialties in the physician workforce in the categories of race, ethnicity, gender, sexual orientation/gender identity, socioeconomic origin and persons with disabilities. (CME Rep. 1, I-06; Reaffirmed: CME Rep. 7, A-08)

H-215.965 Hospital Visitation Privileges for GLBT Patients

Our AMA encourages all hospitals to add to their rules and regulations, and to their Patient's Bill of Rights, language permitting same sex couples and their dependent children the same hospital visitation privileges offered to married couples. (Res. 733, A-06)

H-295.878 Eliminating Health Disparities - Promoting Awareness and Education of Lesbian, Gay, Bisexual, and Transgender (LGBT) Health Issues in Medical Education

Our AMA: (1) supports the right of medical students and residents to form groups and meet on-site to further their medical education or enhance patient care-without regard to their gender, gender identity, sexual orientation, race, religion, disability, ethnic origin, national origin or age; (2) supports students and residents who wish to conduct on-site educational seminars and workshops on health issues in Lesbian, Gay, Bisexual, and Transgender communities; and (3) encourages the Liaison Committee on Medical Education and the Accreditation Council for Graduate Medical Education to include Lesbian, Gay, Bisexual, and Transgender health issues in the cultural competency curriculum for medical education. (Res. 323, A-05)

H-440.885 National Health Survey

Our AMA supports a national health survey that incorporates a representative sample of the U.S. population of all ages (including adolescents) and includes questions on sexual orientation, gender identity, and sexual behavior. (CSA Rep. 4, A-03; Modified: BOT Rep. 11, A-07)

D-65.996 Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population

Our AMA will encourage and work with state medical societies to provide a sample printed nondiscrimination policy suitable for framing, and encourage individual physicians to display for patient and staff awareness-as one example: "This office appreciates the diversity of human beings and does not discriminate based on race, age, religion, ability, marital status, sexual orientation, sex, or gender identity." (Res. 414, A-04; Modified: BOT Rep. 11, A-07)

D-65.995 Health Disparities Among Gay, Lesbian, Bisexual and Transgender Families

Our AMA will work to reduce the health disparities suffered because of unequal treatment of minor children and same sex parents in same sex households by supporting equality in laws affecting health care of members in same sex partner households and their dependent children. (Res. 445, A-05)

Appendix B
Policies of Federation Members on Same Sex Households

Medical Specialty Society	Policy Statement or Position
American Academy of Pediatrics	Children who are born to or adopted by 1 member of a same-sex couple deserve the security of 2 legally recognized parents. Therefore, the Academy “supports legislative and legal efforts to provide the possibility of adoption of the child by the second parent or coparent in families.
American Academy of Family Physicians	Is supportive of legislation which promotes a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parent, regardless of the parents’ sexual orientation.
American College of Obstetricians and Gynecologists	Endorses equitable treatment for lesbians and their families, not only for direct health care needs but also for indirect health care issues, which includes the same legal protections afforded married couples.
American Academy of Child and Adolescent Psychiatrists	Opposes any discrimination based on sexual orientation against individuals in regard to their rights as custodial or adoptive parents.
American Psychiatric Association	Supports the legal recognition of same-sex civil marriage with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions to those same rights, benefits, and responsibilities.