

# Health Implications of the Supreme Court's *Obergefell vs. Hodges* Marriage Equality Decision

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## Abstract

The United States Supreme Court's *Obergefell vs. Hodges* groundbreaking marriage equality decision also created new terrain for lesbian, gay, bisexual, and transgender (LGBT) persons regarding health, healthcare, and health benefits. This article addresses the health implications of this decision by examining its impact on minority stress and stigmatization and health-related benefits. It also includes a discussion of several impending issues affecting LGBT health that remain after *Obergefell*.

**Key words:** benefits, health, LGBT, marriage, minority stress, *Obergefell*.

## Introduction

ON JUNE 26, 2015, the United States Supreme Court rendered its landmark *Obergefell vs. Hodges* decision, which recognized that all states (1) must recognize marriage between two same-sex individuals within their state; and (2) must recognize marriages of same-sex couples performed in other states.<sup>1</sup> In addition to providing marriage equality for lesbian, gay, bisexual, and transgender (LGBT) persons, the *Obergefell* decision also affected issues related to health, healthcare, and health benefits for LGBT persons. This article addresses the health implications of the *Obergefell* decision, including potential mental and physical effects of marriage equality, federal and state health-related benefits, employer health insurance, and taxes from health coverage. It also includes a discussion about several impending issues affecting LGBT health that remain after *Obergefell*.

While sometimes referred to as a “gay marriage” decision, *Obergefell* affects all same-sex couples that seek marriage, including some couples in which one or both members are transgender. This decision affects these couples, too, because most states have tied legal marriage to state identification documents (e.g., birth certificates, drivers' licenses), and many couples with a transgender partner whose state documents identified both partners as the same gender were also denied marriage benefits prior to *Obergefell*. Even transgender persons who identified themselves in opposite-sexed partnerships were denied marriage if they lived in states that prohibited them from amending their gender on state documents (e.g., Ohio) or lived in states that required onerous medical procedures to modify their gender on state documents.

## Mental and Physical Impact of Marriage Equality

Research suggests that denying marriage to same-sex couples may have had negative health implications for LGBT persons. Research regarding minority stress suggests that marriage bans negatively affected health by facilitating chronic stress among LGBT persons through stigmatization. According to the minority stress model, LGBT persons experience higher rates of anxiety, depression, and substance abuse because of repeated experiences of social stigmatization.<sup>2-5</sup> This stigmatization often originates at an early age and stems from perceptions that LGBT persons deviate from norms regarding sexual orientation and gender. Considerable evidence cited in the Institute of Medicine report on LGBT health<sup>6</sup> supports the view that minority stress contributes substantially to LGBT disparities in both mental and physical health. Furthermore, being branded as less deserving of certain rights can create internalized hatred and depression, hypervigilance about rejection, and concealment of sexual orientation (often due to fear of rejection), which can produce higher rates of stress among LGBT individuals.<sup>7,8</sup> Research also suggests that LGBT people experiencing multiple levels of stigma (e.g., race, gender identity, age) may experience increased health disparities, in part, because of increased minority stress and stigmatization due to limited opportunities and discrimination across multiple dimensions.<sup>9-12</sup> For example, one study in San Francisco found that African American transgender women had much higher rates of HIV compared to transgender women who did not identify as African American.<sup>9</sup>

While research regarding minority stress provides a conceptual framework for understanding the connection between

marriage inequality and LGBT health disparities, research specifically looking at marriage bans provides more direct evidence of the potential harm of such discrimination on LGBT health. For example, several studies found that same-sex couples living in states with marriage bans had higher rates of mental health issues, stress, mood and anxiety disorders, and substance abuse.<sup>4,7,13–15</sup> A 2010 study comparing lesbians, gay men, and bisexuals in states with marriage bans versus states with marriage equality found that LGB persons living in states with bans had a nearly 37% increase in any mood disorder, 248.2% increase in generalized anxiety disorder, 41% increase in alcohol use, and 36% increase in any psychiatric co-morbidity.<sup>15</sup>

Given the research on the impact of discrimination, one might be tempted to assume that marriage equality will eradicate LGBT health disparities. However, because many states that had marriage bans still lack legal protections for housing and employment, health disparities between LGBT persons and non-LGBT persons will likely remain, even after marriage equality. Moreover, research regarding long-term stress exposure suggests that chronic stress caused by discrimination may continue to linger—and in some cases—result in negative health consequences that may be irreversible. Research has documented that chronic stress can produce long-lasting changes in the brain, including structural changes and loss of brain volume in some regions, that are linked with anxiety, depression, and substance abuse.<sup>16,17</sup> Research is still emerging in this field but suggests the importance of eradicating all forms of discrimination against LGBT persons—and sooner rather than later. While discrimination against LGBT persons will continue to negatively affect LGBT health, the *Obergefell* decision, however, moves LGBT persons one step closer to better health by affirming marriage equality and thus the dignity of LGBT couples to have equal rights as their opposite-sexed peers in this legal arena.

### Federal and State Health-Related Benefits

In addition to potentially improving mental and physical health by decreasing minority stress and stigmatization, the *Obergefell* decision indirectly affects the health of many LGBT persons by expanding federal and state health-related benefits. *Obergefell* followed an earlier Supreme Court decision—*United States vs. Windsor*<sup>18</sup>—that invalidated Section 3 of the Defense of Marriage Act (DOMA). Section 3 defined marriage between a man and woman and thus precluded same-sex spouses from federal benefits. After *Windsor*, same-sex couples who lived in states with marriage bans but married elsewhere gained *some* federal benefits when they returned home. However, they were still denied all state benefits of marriage and some federal benefits that were tied to their residence, including spousal veterans' benefits and social security benefits. Only after *Obergefell* did all same-sex couples gain these rights if they chose to marry.

Moreover, by requiring all states to recognize marriage equality, same-sex couples that were unable to travel out-of-state to marry can now access state and federal benefits after marrying in their home state. This right becomes especially important for persons caring for a sick partner who need to access spousal benefits or job protection to care for a spouse. The federal Family and Medical Leave Act (FMLA)<sup>19</sup>

prohibits employers from terminating workers who need to take up to 12 weeks to care for a spouse, child, or parent with a serious health condition. (FMLA only applies to employees who worked for their employer for at least 1,250 hours in the past 12 months and worked for an employer with 50 or more employees within a 75-mile radius.) After *Windsor*, the federal government recognized the right to take job-protected leave for same-sex spouses, regardless of whether the state where they live recognized marriage. Couples who lived in states that did not recognize marriage needed to travel to get married, and some same-sex couples had health conditions that precluded such travel. Even the named plaintiff in *Obergefell* had to raise money to charter a plane that could accommodate the necessary medical equipment for his ill partner to travel from Ohio to Maryland to get married. If they had been unable to raise money for their travel, James Obergefell would have been unable to marry his long-time partner, John, unable to invoke FMLA protection, and thus could have been lawfully terminated if he needed to take time off work to care for John.

### Employer Health Insurance

While the *Obergefell* decision expanded access to health benefits at a federal and state level, it also increased access to employer health benefits for same-sex spouses. After the *Windsor* decision, the law required employers with fully insured health plans (not self-insured plans) to provide equal benefits to same-sex spouses if the state recognized marriage equality. Guidelines issued by the Department of Health and Human Services in March 2014 clarified that insurance companies must offer employers in states with marriage bans the *option* to provide coverage to same-sex spouses.<sup>20</sup> (A fully insured health plan is one in which the employer pays a premium to the insurance company and the employee, or dependent, pays deductibles and co-payments. In contrast, a self-insured health plan is one where an employer operates its own plan through a third party administrator instead of purchasing a fully insured plan from an insurance company.) Employers, however, could refuse to do so.

After *Obergefell*, employers who offer fully-insured health plans in any of the fifty U.S. states must provide spousal benefits to same-sex couples if they provide such benefits for opposite-sex couples. Questions remain as to whether LGBT employees with self-insured plans can access spousal health benefits equally. By defining marriage as a fundamental right, the Supreme Court's language suggests that self-insured plans may need to provide equal spousal health benefits. Subsequent litigation will likely emerge to clarify this issue.

### Taxes from Health Coverage

Before *Obergefell*, some same-sex couples who lived in states with marriage bans were able to obtain partner health benefits if their employers provided coverage for domestic partnerships, civil unions, or similar coverage. While they still obtained benefits, they were unfortunately taxed on the value of these benefits, which were considered imputed income. After *Windsor*, the federal government no longer taxed the value of health insurance to same-sex spouses. However, states were permitted to continue taxing these benefits. This outcome prompted confusing tax implications for

health benefits. For example, a couple that was legally married in Illinois but lived in Michigan could be taxed by Michigan for health benefits but not the federal government. Same-sex spouses in this situation had to declare different incomes and use different forms because Michigan considered the value of health benefits “imputed income,” whereas the federal government did not. After *Obergefell*, same-sex spouses will no longer experience these tax penalties because the value of spousal health benefits are not considered imputed income in any state.

Before *Obergefell*, some employers had increased the income of employees who incurred additional taxes after adding same-sex spouses to their insurance plans. Now, employers must likely remove this benefit because it would treat same-sex spouses more favorably than opposite-sex spouses. However, employers may still choose to provide additional income to same-sex and opposite-sex partners who invoke health benefits through domestic partnerships or civil unions because they will still incur increased taxes as unmarried couples.

### Discussion

In the wake of *Obergefell*, several issues remain that affect LGBT health. First, LGBT employees with self-funded insurance plans may find themselves battling employers and insurance companies to cover their same-sex spouse. Second, employers may decide not to cover any spouses to avoid coverage for same-sex spouses. Employers will also wrestle with whether to continue coverage for unmarried persons, now that marriage equality has been attained. Third, the *Obergefell* decision does not directly address health coverage or equal rights in healthcare for transgender persons, and the battle for equal health coverage will remain. Fourth, insurance plans that exclude same-sex couples for fertility treatments and surrogate parenting may confront more litigation for discrimination. Fifth, because marriage bestows only certain protections—and protects only spouses—increasing efforts will focus on eliminating discrimination in areas like employment and housing. Given research on the health implications of such discrimination, the passage of such laws may result in better health among LGBT persons. Finally, employers and legislators may carve out religious exemptions for healthcare coverage and other areas that affect LGBT health. The Supreme Court’s 2014 decision in *Burwell vs. Hobby Lobby*<sup>21</sup> already ruled that corporations might be exempt from the Affordable Care Act’s requirement that employers cover contraception, if the company’s owners have religious objections. Immediately after the *Obergefell* decision, several states allowed county clerks to refuse issuing marriage licenses to same-sex couples for religious reasons. Demands for religious exemptions will likely grow over the next few years.

### Conclusion

While several health-related issues remain unclear after *Obergefell*, this decision provides solace to many LGBT persons who seek equal rights and health benefits through marriage. By affirming marriage rights, it eliminates one mark of inequality and may positively affect mental and physical health outcomes for many LGBT couples. Same-sex spouses who need access to health-related benefits and insurance can

also now invoke important rights that can improve their health and wellbeing. While much work remains, the *Obergefell* decision provides a significant starting point for securing better health for LGBT persons.

### Author Disclosure Statement

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