

## Quick Guide to Cancer-Related LGBTQ+ Rights

People in the LGBTQ+ community may face unique cancer-related legal and practical issues that impact health care, access to health insurance, employment, and estate planning. Planning ahead can avoid some of these issues.

### **How Laws Address Relationship Status**

Laws often treat individuals who are married differently than individuals who are not. Even individuals who are engaged do not have the same legal status under many laws, as those who are legally married. That difference in legal status can impact access to health insurance, employee benefits, family and medical leave, inheritance, taxes, and rights to medical decision-making.

Before same-sex marriage became legal under federal law in 2015, many members of the LGBTQ+ community accessed some legal protections through civil unions and domestic partnerships, offered by some states and local governments. However, there were legal limitations in civil unions and domestic partnerships. For example, couples in a civil union are not entitled to each other's Social Security benefits. Additionally, civil unions are not always recognized by other states.

Since 2015, civil union and domestic partnership laws have been updated on a state-by-state basis. The result is a confusing mix of rights that depend on the state issuing the license or the couple's residency. Whether called civil unions, domestic partnerships, or reciprocal benefits, these legally-recognized relationships in certain states expand the legal rights available to couples. For people in these state-recognized relationships, benefits can include:

- Employee benefits (e.g., being covered under your partner's health insurance plan)
- State family and medical leave
- State-level benefits of marriage

These states still have civil unions and domestic partnerships available: CA, CO, HI (aka reciprocal beneficiary), IL, ME, NJ, NV, OR, WA (age 62+), WI, and DC. These states converted civil unions to marriage: CT, DE, NH, RI, and VT.



### **Health Care**

LGBTQ+ patients may face barriers when accessing health care, such as who can visit them, who can access their medical information, and who can make medical decisions if they are unable to make decisions for themselves.

**Having visitors in a hospital or medical setting:** Most hospitals are required by federal law to have written rules that give patients the right to choose their visitors. They are not allowed to discriminate against a patient based on sexual orientation or gender identity. However, in a crisis, or a moment when you are not able to communicate your decisions, it can be helpful to document your wishes about who you would like to visit you in a hospital. You can do that by creating a Hospital Visitation Directive. This document tells your health care providers to allow your chosen visitors to visit you. It can be a separate document or part of another document, like an Advance Health Care Directive (AHCD). You can also use this document to exclude certain relatives if that is your choice.

**Decision-making in the health care setting:** It is important to document your wishes for your medical care, in case you are unable to make those decisions for yourself in the future. You can also choose a person to make those medical decisions for you (health care proxy), or you can identify your medical care choices (living will), or both. You can document these decisions in an AHCD. If you do not have an AHCD, then state law or hospital policy will give decision-making power to a patient's closest legal and biological relatives (i.e., spouse, then adult children, parents, etc.). If those are not the individuals who you want making medical decisions for you, then it is very important to complete an AHCD. Once you have completed these documents, you can file your AHCD and visitation authorization forms with your hospital. However, it can also be useful to carry this information with you in case of an emergency.

For more information about Advance Health Care Directives: <https://TriageCancer.org/EstatePlanning>.

## **Employment & Employee Benefits**

Members of the LGBTQ+ cancer community, particularly those who are in same-sex relationships and are not legally married, may face differences in qualifying for time off work as a caregiver, getting health insurance coverage, or accessing other employee benefits offered through their partner's employer.

### **Family and Medical Leave Act (FMLA)**

The FMLA allows eligible employees to take up to 12 weeks off work, each year, for their own serious medical condition or as a caregiver of a spouse, parent, or child. For more information about the FMLA, read our Quick Guide to the FMLA: <https://TriageCancer.org/QuickGuide-FMLAExtended>. It is important to note that the FMLA:



- applies to same-sex spouses
- does not apply to domestic or civil union partners
  - Domestic or civil union partners may be eligible to take leave to care for their children without a biological or legal relationship (ex., you stand *in loco parentis* to a child if you provide day-to-day care or financial support)

Some states have their own laws that offer family and medical leave. These states have family and medical leave laws that do apply to domestic or civil union partners: CA, CO, CT, DE, HI, ME, NV, NH, NJ, OR, RI, VT, WA, WI, and DC. For information about state leave laws, visit: <https://triagecancer.org/state-laws/taking-time-off>.

### **Employer-Sponsored Health Insurance & Other Employee Benefits**

It is important to check to see if your employer-sponsored health insurance plan offers coverage to spouses and dependents. Some health insurance plans that cover spouses do not cover domestic partnerships or civil unions.

Employers may also offer other employee benefits, such as dental or vision insurance, wellness programs, financial management, pet insurance, or legal insurance. Employees who are not married (e.g., in a civil union or domestic partnership) should verify with their employer's human resource department that coverage for employee benefits extends to their partner. If you are uncomfortable discussing this with your employer, you can ask for a description of benefits to review each policy.



## **Estate Planning**

Estate planning is a process that involves thinking about your wishes related to your health and finances, and then documenting those wishes to ensure they will be carried out. Most people think you only need to plan your estate if you have lots of money or property. But every adult over age 18 should have an estate plan. Creating an estate plan allows you to express your values and personal preferences. Preparing in advance can provide you with peace of mind that your loved ones will know your wishes. It may also bring them peace of mind knowing they are following your wishes.

In addition to an Advance Health Care Directive, discussed above, there are other estate planning documents that may be helpful for the LGTBQ+ cancer community. For example, when someone dies without a will, states have intestacy rules about what happens to their estate. Most intestacy laws will transfer your estate to your family, in a specific order: (1) spouse, (2) children, (3) parents, etc. If you are not legally married, or do not want your estate to be transferred in that way, you should consider completing a will and/or trust.

Also, there may be a time when you may be unable to make financial decisions for yourself or attend to matters such as banking and you may need help. A Power of Attorney for Financial Affairs is a legal document where you can authorize a trusted adult to carry out your financial decisions. Those decisions could be as simple as depositing or withdrawing funds from a bank account, or handling other personal matters, such as receiving mail or making travel arrangements.

If you have not completed estate planning documents that include your funeral preferences, in most states, your next of kin will make funeral decisions, similar to intestacy. If you prefer someone else to make your funeral arrangements, you can complete a funeral representative designation form or include that information in your other estate planning documents. Rules vary in each state. For more information about estate planning and your state-specific rules:

[www.CancerFinances.org](http://www.CancerFinances.org) and <https://TriageCancer.org/EstatePlanning>. For help getting organized, read our Checklist: Getting Organized: <http://TriageCancer.org/Checklist-GettingOrganized>.

**For additional resources for the LGBTQ+ cancer community, visit the American Society of Clinical Oncology: [www.cancer.net/coping-with-cancer/finding-social-support-and-information/resources-lgbtq-people-with-cancer](http://www.cancer.net/coping-with-cancer/finding-social-support-and-information/resources-lgbtq-people-with-cancer)**