

Title: Equity and Access to Reproductive Services for LGBTQIA+ Individuals

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Position Statement: The American Medical Women’s Association (AMWA) advocates for equal access to reproductive services, regardless of sexual orientation or gender identity.

Background: LGBTQIA+ individuals should have equal access and support in creating families in the way that is best for them. Family building can take many forms; for the purpose of this position paper, we will focus on families created through pregnancy.

Many policies are established with heterosexual individuals in mind, and thus create barriers for LGBTQIA+ individuals to qualify for coverage.¹ AMWA and other medical organizations also acknowledge insurance coverage as a barrier in accessing care: “Insurance coverage for these services can be challenging for many populations, and additional barriers, such as documenting infertility using traditional definitions, further impede access.” Also, language on patient forms is often not inclusive (i.e. assumes all patients presenting for fertility care are heterosexual)¹. In addition to calling for more research into insurance coverage for LGBTQIA+ individuals seeking fertility services, we suggest the following changes to definitions and language to allow for more inclusive access. We strongly suggest using inclusive language both as providers and in insurance policy wording.

When referring to family building by means of pregnancy, we recommend using the term “fertility” services instead of “infertility” services to reflect the more diverse population seeking access to this care. The current criteria to establish an “infertility diagnosis” is failure to achieve a successful pregnancy after 12 months (for women under 35) or 6 months (for women over 35) of timed unprotected intercourse or therapeutic donor insemination. We recommend that people be provided insurance coverage for fertility services if they have not conceived and are (1) under the age of 35 with well-timed cycles and six months of inseminations with either fresh or cryopreserved donor sperm, or (2) over 35 years old with well-timed cycles and three months of inseminations with either fresh or cryopreserved donor sperm.

Research consistently supports that LGBTQIA+ and gender-nonconforming parents are able to provide safe and healthy homes for child rearing. Perrin and Siegel² found that “children and adolescents who grow up with gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual.” Additionally, the California Supreme Court set a legal precedent in 2008 with the case *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*³, ruling that sexual orientation cannot be used to refuse fertility services. This case established that the legal protections in place against discrimination also apply to fertility services, ruling that physicians must offer “full and equal” services including fertility treatment to LGBTQIA+ patients despite religious objections, or must find a colleague who will do so.³

Leading professional organizations support equal access to fertility services. ACOG states that ethical practices include:⁴ “In the provision of reproductive services, the patient’s well-being must be paramount. Any conscientious refusal that conflicts with a patient’s well-being should be accommodated only if the primary duty to the patient can be fulfilled.” ACOG acknowledges the potential for discrimination in providing these reproductive

services:⁴

Consider, for instance, refusals to provide infertility services to same-sex couples. ...[A]llowing physicians to discriminate on the basis of sexual orientation would constitute a deeper insult, namely reinforcing the scientifically unfounded idea that fitness to parent is based on sexual orientation, and, thus, reinforcing the oppressed status of same-sex couples. ...Legitimizing refusals in reproductive contexts may reinforce the tendency to value women primarily with regard to their capacity for reproduction while ignoring their interests and rights as people more generally⁴.

Despite this legal precedent, American Society for Reproductive Medicine (ASRM) highlights inconsistencies in legal protection⁵: “Although laws in some states do prohibit provider discrimination on the basis of marital status or sexual orientation, such laws do not exist at the federal level or in every state, leaving gaps in protection against discrimination based on patient demographics.”

AMWA calls for insurance companies and medical providers to improve access to care for LGBTQIA+ individuals. In addition, federal and state legal protections must be in place to protect access for LGBTQIA+ patients, as refusal of fertility services may solidify the discrimination already experienced by LGBTQIA+ individuals. It is the position of AMWA that sexual orientation and gender identity should not be a factor in denial of reproductive services, that language be more inclusive of all populations on medical forms and in conversations, and that lesbian and bisexual women be eligible for fertility services if no conception is achieved after three months of well-timed fresh or cryopreserved donor sperm inseminations if 35 years or older, or after six months of well-timed fresh or cryopreserved donor sperm inseminations if less than 35 years old.

References:

¹ *Obstetrics & Gynecology*, 2018. ACOG Committee Opinion No. 749: Marriage and Family Building Equality for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Gender Nonconforming Individuals. 132(2), pp.e82-e86.

² Perrin, E., Siegel, B., Pawelski, J., Siegel, B., Dobbins, M., Lavin, A., Mattson, G., Pascoe, J. and Yogman, M., 2013. Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian. *Pediatrics*, 131(4), pp.e1374-e1383.

³ SCOCAL, *North Coast Women's Care Medical Group v. San Diego Superior Court*, 44 Cal. 4th 1145, 189 P.3d 959, 81 Cal. Rptr. 3d 708.

⁴ *Obstetrics & Gynecology*, 2007. ACOG Committee Opinion No. 385: The Limits of Conscientious Refusal in Reproductive Medicine. 110(5), pp.1203-1208.

⁵ *Fertility and Sterility*, 2013. Access to fertility treatment by gays, lesbians, and unmarried persons: a committee opinion. 100(6), pp.1524-1527.