STATE OF NEW YORK

11300

IN ASSEMBLY

August 15, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Simotas) -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to establishing the lesbian, gay, bisexual, and transgender long-term care facility residents' bill of rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The elder law is amended by adding a new article 4 to read as follows:

ARTICLE 4

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER LONG-TERM CARE FACILITY RESIDENTS' BILL OF RIGHTS

Section 263. Definitions.

264. Unlawful actions.

265. Recordkeeping.

266. Protection of personally identifiable information.

267. Resident privacy.

268. Training.

269. Application.

270. Violations.

§ 263. Definitions. For the purposes of this article:

1."Gender identity or expression" shall mean a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.

2. "Gender-nonconforming" shall mean a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act.

3. "LGBT" shall mean lesbian, gay, bisexual, or transgender.

4. "Long-term care facilities" or "facilities" shall mean residential health care facilities as defined in subdivision three of section twenty-eight hundred one of the public health law, adult care facilities as defined in subdivision twenty-one of section two of the social services

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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law, and assisted living residences, as defined in article forty-six-B of the public health law, or any facilities which hold themselves out or advertise themselves as providing assisted living services and which are required to be licensed or certified under the social services law or the public health law.

5. "Long-term care facility staff" or "facility staff" shall mean all individuals employed by or contracted directly with the facility.

6. "Resident" shall mean a resident or patient of a long-term care facility.

7. "Transition" shall mean to undergo a process by which a person changes physical sex characteristics or gender expression to match the person's inner sense of being male or female. This process may include, among other things, a name change, a change in preferred pronouns, and a change in social gender expression, as indicated by hairstyle, clothing, and restroom use. Transition may or may not include hormone use and surgery.

§ 264. Unlawful actions. 1. Except as provided in subdivision two of this section, it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity or expression, or human immunodeficiency virus (HIV) status:

(a) deny admission to a long-term care facility, transfer or refuse to transfer a resident within a facility or to another facility, or discharge or evict a resident from a facility;

(b) deny a request by residents to share a room;

(c) where rooms are assigned by gender, assigning, reassigning or refusing to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request;

(d) prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity, regardless or whether the resident is making a gender transition or appears to be gender-nonconforming. Harassment includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom available to other persons of the same gender identity;

(e) willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns, even if the resident is not present;

(f) deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for any other resident;

(g) restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; and

(h) deny or restrict medical or nonmedical care that is appropriate to a resident's organ and bodily needs, or provide medical or nonmedical care in a manner that, to a similarly situated reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort.

2. The provisions of this section shall not apply to the extent that they are incompatible with any professionally reasonable clinical judgment that is based on articulable facts of clinical significance.

3. Each facility shall post the following notice alongside its current nondiscrimination policy in all places and on all materials where that policy is posted: "(NAME OF FACILITY) DOES NOT DISCRIMINATE AND DOES

NOT PERMIT DISCRIMINATION, INCLUDING, BUT NOT LIMITED TO, BULLYING, ABUSE, HARASSMENT, OR DIFFERENTIAL TREATMENT ON THE BASIS OF ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV STATUS, OR BASED ON ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV STATUS. YOU MAY FILE A COMPLAINT WITH THE OFFICE OF THE NEW YORK STATE LONG-TERM CARE OMBUDSMAN PROGRAM (PROVIDE CONTACT INFORMATION) IF YOU BELIEVE THAT YOU HAVE EXPERIENCED THIS KIND OF DISCRIMINATION."

§ 265. Recordkeeping. 1. A facility shall employ procedures for recordkeeping, including, but not limited to, records generated at the time of admission, that include the gender identity, correct name, as indicated by the resident, and pronoun of each resident, as indicated by the resident and such records will be kept up to date.

2. The New York state long-term care ombudsman program shall employ procedures for recordkeeping of complaints filed from residents of long-term care facilities pursuant to this article, and shall establish a method of publicly reporting these complaints while maintaining residents' individual privacy.

§ 266. Protection of personally identifiable information. Long-term care facilities shall protect personally identifiable information regarding residents' sexual orientation, whether a resident is transgender, a resident's transition history, and HIV status from unauthorized disclosure, as required by the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg), if applicable, and any other applicable provision of federal or state law. A facility shall take any steps reasonably necessary to minimize the likelihood of inadvertent or incidental disclosure of that information to other residents, visitors, or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

§ 267. Resident privacy. Long-term care facility staff not directly involved in providing direct care to a resident, including, but not limited to, a transgender or gender-nonconforming resident, shall not be present during physical examination or the provision of personal care to that resident if the resident is partially or fully unclothed without the express permission of that resident, or the resident's legally authorized representative or responsible party. A facility shall use doors, curtains, screens, or other effective visual barriers to provide bodily privacy for all residents, including, but not limited to, transgender or gender-nonconforming residents, whenever they are partially or fully unclothed. In addition, all residents, including, but not limited to, LGBT or gender-nonconforming residents, shall be informed of and have the right to refuse to be examined, observed, or treated by any facility staff when the primary purpose is educational or informational rather than therapeutic, or for resident appraisal or reappraisal, and that refusal shall not diminish the resident's access to care for the primary purpose of diagnosis or treatment.

§ 268. Training. 1. In addition to other training required by federal or state laws, long-term care facilities shall provide existing employees and new hires access to the online learning tool "Building Respect for LGBT Older Adults," which is available on the National Resource Center on LGBT Aging internet website (www.lgbtagingcenter.org).

2. At least once every two years, a long-term care facility shall ensure that each facility staff member who works directly with residents receives training on cultural competency focusing on patients who identify as LGBT. The instruction required by subdivision one of this

section shall teach attitudes, knowledge, and skills that enable facility staff to care effectively for residents who identify as LGBT, which may include:

(a) understanding and applying relevant data concerning health disparities and risk factors for patients seeking clinical care who identify as LGBT;

(b) legal requirements pertaining to patients who identify as LGBT;

(c) best practices for collection, storage, use, and confidentiality of information regarding sexual orientation and gender identity;

(d) best practices for training support staff regarding treatment of patients who identify as LGBT and their families; and

(e) understanding the intersections between systems of oppression and discrimination, recognizing that those who identify as LGBT may experience these systems in varying degrees of intensity, addressing underlying cultural biases, and providing nondiscriminatory care.

3. Facility staff required to receive training under this section shall receive the training within six months of hire unless the person provides proof of having received comparable training within the prior two years that the facility determines complies with this section. If the facility accepts the person's proof of prior training, a record of the content of the prior training sufficient to determine its compliance with this section must be kept on site at the facility.

4. The department of health, in conjunction with the office for the aging, shall develop and implement regulations for the conduct of training as required by this section.

§ 269. Application. Nothing in this article should be construed to impede existing programs, benefits, or protections for LGBT residents at long-term care facilities.

§ 270. Violations. 1. A violation of the provisions of this article shall be treated as a violation under section twelve of the public health law.

2. Any facility that intentionally violates any provision of this article shall be liable, in a civil action or proceeding maintained by one of more residents of the long-term care facility, for injunctive relief, damages, or any other appropriate relief in law or equity. If it shall appear to the satisfaction of the court or justice that the facility has, in fact, violated a provision of this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any resident of the long-term care facility has, in fact, been injured or damaged thereby.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the addition, amendment or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.