

STATE OF NEW YORK

8580

IN SENATE

May 10, 2018

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed 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:

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

ARTICLE 4

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

Section 263. Definitions.

7 264. Unlawful actions.

8 265. Recordkeeping.

9 266. Protection of personally identifiable information.

10 267. Resident privacy.

11 268. Training.

12 269. Application.

13 270. Violations.

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

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

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

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

23 4. "Long-term care facilities" or "facilities" shall mean residential
24 health care facilities as defined in subdivision three of section twen-
25 ty-eight hundred one of the public health law, adult care facilities as
26 defined in subdivision twenty-one of section two of the social services
27

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section shall teach attitudes, knowledge, and skills that enable facili-
2 ty staff to care effectively for residents who identify as LGBT, which
3 may include:

4 (a) understanding and applying relevant data concerning health dispar-
5 ities and risk factors for patients seeking clinical care who identify
6 as LGBT;

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

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

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

12 (e) understanding the intersections between systems of oppression and
13 discrimination, recognizing that those who identify as LGBT may experi-
14 ence these systems in varying degrees of intensity, addressing underly-
15 ing cultural biases, and providing nondiscriminatory care.

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

23 4. The department of health, in conjunction with the office for the
24 aging, shall develop and implement regulations for the conduct of train-
25 ing as required by this section.

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

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

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

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