

STATE OF NEW YORK

866--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 11, 2019

Introduced by M. of A. SIMOTAS, O'DONNELL, QUART, LAVINE, BRONSON, REYES, GOTTFRIED, GLICK, DE LA ROSA, CRUZ -- read once and referred to the Committee on Aging -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the elder law and the public health 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. Subdivision 1 of section 203 of the elder law is amended to read as follows:

1. The office shall submit to the federal department of health, education and welfare a state plan for purposes of the federal older Americans act of 1965 and subsequent amendments thereto. The office shall be the single state agency for supervising the administration of such plan and shall be primarily responsible for coordination of state programs for the aging for purposes of such federal act. The office shall act for the state in any negotiations relative to the submission and approval of such plan and may make such arrangements, not inconsistent with law, as may be required by or pursuant to federal law to obtain and retain such approval and to secure for the state the benefits of the provisions of such federal act. For the purposes of administering the federal older Americans Act of 1965 and subsequent amendments thereto, the term "greatest social need" shall be interpreted by the office to include the lesbian, gay, bisexual and transgender senior population, as well as seniors living with HIV.

§ 2. The public health law is amended by adding a new article 46-C to read as follows:

ARTICLE 46-C

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

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

LBD01537-05-9

1 Section 4670. Definitions.

2 4671. Unlawful actions.

3 4672. Recordkeeping.

4 4673. Protection of personally identifiable information.

5 4674. Resident privacy.

6 4675. Training.

7 4676. Application.

8 4677. Violations.

9 § 4670. Definitions. For the purposes of this article:

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

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

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

19 4. "Long-term care facilities" or "facilities" shall mean residential
20 health care facilities as defined in subdivision three of section twenty-
21 eight hundred one of this chapter, adult care facilities as defined
22 in subdivision twenty-one of section two of the social services law, and
23 assisted living residences, as defined in article forty-six-B of this
24 chapter, or any facilities which hold themselves out or advertise them-
25 selves as providing assisted living services and which are required to
26 be licensed or certified under the social services law or this chapter.

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

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

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

38 § 4671. Unlawful actions. 1. Except as provided in subdivision two of
39 this section, it shall be unlawful for a long-term care facility or
40 facility staff to take any of the following actions wholly or partially
41 for a discriminatory reason on the basis of a person's actual or
42 perceived sexual orientation, gender identity or expression, or human
43 immunodeficiency virus (HIV) status:

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

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

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

52 (d) prohibit a resident from using, or harass a resident who seeks to
53 use or does use, a restroom available to other persons of the same
54 gender identity, regardless of whether the resident has taken or is
55 taking hormones, has had transition-related surgery, or is making a
56 gender transition or appears to be gender-nonconforming. Harassment

1 includes, but is not limited to, requiring a resident to show identity
2 documents in order to gain entrance to a restroom available to other
3 persons of the same gender identity;

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

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

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

13 (h) deny or restrict a resident from accessing appropriate medical or
14 nonmedical care, or provide medical or nonmedical care, that unreason-
15 ably demeans the resident's dignity or causes avoidable discomfort.

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

19 3. Each facility shall post the following notice alongside its current
20 nondiscrimination policy in all places and on all materials where that
21 policy is posted: "(NAME OF FACILITY) DOES NOT DISCRIMINATE AND DOES
22 NOT PERMIT DISCRIMINATION, INCLUDING, BUT NOT LIMITED TO, BULLYING,
23 ABUSE, HARASSMENT, OR DIFFERENTIAL TREATMENT ON THE BASIS OF ACTUAL OR
24 PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV
25 STATUS, OR BASED ON ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF
26 THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTI-
27 TY OR EXPRESSION, OR HIV STATUS. YOU MAY FILE A COMPLAINT WITH THE
28 OFFICE OF THE NEW YORK STATE LONG-TERM CARE OMBUDSMAN PROGRAM (PROVIDE
29 CONTACT INFORMATION) IF YOU BELIEVE THAT YOU HAVE EXPERIENCED THIS KIND
30 OF DISCRIMINATION."

31 § 4672. Recordkeeping. 1. A facility shall employ procedures for
32 recordkeeping, including, but not limited to, records generated at the
33 time of admission, that include the gender identity, correct name, as
34 indicated by the resident, and pronoun of each resident, as indicated by
35 the resident and such records will be kept up to date.

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

41 § 4673. Protection of personally identifiable information. Long-term
42 care facilities shall protect personally identifiable information
43 regarding residents' sexual orientation, whether a resident is transgen-
44 der, a resident's transition history, and HIV status from unauthorized
45 disclosure, as required by the federal Health Insurance Portability and
46 Accountability Act of 1996 (42 U.S.C. Sec. 300gg), if applicable, and
47 any other applicable provision of federal or state law. A facility shall
48 take any steps reasonably necessary to minimize the likelihood of inad-
49 vertent or incidental disclosure of that information to other residents,
50 visitors, or facility staff, except to the minimum extent necessary for
51 facility staff to perform their duties.

52 § 4674. Resident privacy. Long-term care facility staff not directly
53 involved in providing direct care to a resident, including, but not
54 limited to, a transgender or gender-nonconforming resident, shall not be
55 present during physical examination or the provision of personal care to
56 that resident if the resident is partially or fully unclothed without

1 the express permission of that resident, or the resident's legally
2 authorized representative or responsible party. A facility shall use
3 doors, curtains, screens, or other effective visual barriers to provide
4 bodily privacy for all residents, including, but not limited to, trans-
5 gender or gender-nonconforming residents, whenever they are partially or
6 fully unclothed. In addition, all residents, including, but not limited
7 to, LGBT or gender-nonconforming residents, shall be informed of and
8 have the right to refuse to be examined, observed, or treated by any
9 facility staff when the primary purpose is educational or informational
10 rather than therapeutic, or for resident appraisal or reappraisal, and
11 that refusal shall not diminish the resident's access to care for the
12 primary purpose of diagnosis or treatment.

13 § 4675. Training. 1. At least once every two years, a long-term care
14 facility shall ensure that each facility staff member who works directly
15 with residents receives training on cultural competency focusing on
16 patients who identify as LGBT and patients living with HIV.

17 2. The instruction required by subdivision one of this section shall
18 be provided by an entity or individual with expertise in identifying and
19 addressing the legal and social challenges faced by LGBT people and
20 people living with HIV as they age and reside in long-term care facili-
21 ties and shall teach attitudes, knowledge, and skills that enable facil-
22 ity staff to care effectively for residents who identify as LGBT and
23 residents living with HIV, which may include:

24 (a) understanding and applying relevant data concerning health dispar-
25 ities and risk factors for patients seeking clinical care who identify
26 as LGBT and patients living with HIV;

27 (b) legal requirements pertaining to patients who identify as LGBT and
28 patients living with HIV;

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

32 (d) best practices for training support staff regarding treatment of
33 patients who identify as LGBT or are living with HIV and their families;
34 and

35 (e) understanding the intersections between systems of oppression and
36 discrimination, recognizing that those who identify as LGBT or are
37 living with HIV may experience these systems in varying degrees of
38 intensity, addressing underlying cultural biases, and providing nondis-
39 crimatory care.

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

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

50 § 4676. Application. Nothing in this article should be construed to
51 impede existing programs, benefits, or protections for LGBT residents or
52 residents living with HIV at long-term care facilities.

53 § 4677. Violations. 1. A violation of the provisions of this article
54 shall be treated as a violation under section twelve of this chapter.

55 2. Any facility that intentionally violates any provision of this
56 article shall be liable, in a civil action or proceeding maintained by

1 one of more residents of the long-term care facility, for injunctive
2 relief, damages, or any other appropriate relief in law or equity. If it
3 shall appear to the satisfaction of the court or justice that the facil-
4 ity has, in fact, violated a provision of this article, an injunction
5 may be issued by such court or justice, enjoining and restraining any
6 further violation, without requiring proof that any resident of the
7 long-term care facility has, in fact, been injured or damaged thereby.

8 § 3. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law. Effective immediately, the addition, amend-
10 ment or repeal of any rule or regulation necessary for the implementa-
11 tion of this act on its effective date are authorized to be made and
12 completed on or before such date.