

# STATE OF NEW YORK

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866--B

2019-2020 Regular Sessions

## IN ASSEMBLY

January 11, 2019

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

1 Section 1. Subdivision 1 of section 203 of the elder law is amended  
2 to read as follows:

3 1. The office shall submit to the federal department of health, educa-  
4 tion and welfare a state plan for purposes of the federal older Ameri-  
5 cans act of 1965 and subsequent amendments thereto. The office shall be  
6 the single state agency for supervising the administration of such plan  
7 and shall be primarily responsible for coordination of state programs  
8 for the aging for purposes of such federal act. The office shall act for  
9 the state in any negotiations relative to the submission and approval of  
10 such plan and may make such arrangements, not inconsistent with law, as  
11 may be required by or pursuant to federal law to obtain and retain such  
12 approval and to secure for the state the benefits of the provisions of  
13 such federal act. For the purposes of administering the federal older  
14 Americans Act of 1965 and subsequent amendments thereto, the term  
15 "greatest social need" shall be interpreted by the office to include the  
16 lesbian, gay, bisexual and transgender senior population, as well as  
17 seniors living with HIV.

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

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

LBD01537-07-9

ARTICLE 46-C  
LESBIAN, GAY, BISEXUAL, AND TRANSGENDER LONG-TERM CARE FACILITY  
RESIDENTS' BILL OF RIGHTS

Section 4670. Definitions.

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§ 4670. 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 this chapter, adult care facilities as defined in subdivision twenty-one of section two of the social services law, and assisted living residences, as defined in article forty-six-B of this chapter, 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 this chapter.

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.

§ 4671. 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 for a discriminatory reason 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 of whether the resident has taken or is taking hormones, has had transition-related surgery, or 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 expression of intimacy or sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; and

(h) deny or restrict a resident from accessing appropriate medical or nonmedical care, or provide medical or nonmedical care, that unreasonably 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."

§ 4672. 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.

§ 4673. 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.

§ 4674. Resident privacy. Long-term care facility staff not directly involved in providing direct care to a resident, including, but not

1 limited to, a transgender or gender-nonconforming resident, shall not be  
2 present during physical examination or the provision of personal care to  
3 that resident if the resident is partially or fully unclothed without  
4 the express permission of that resident, or the resident's legally  
5 authorized representative or responsible party. A facility shall use  
6 doors, curtains, screens, or other effective visual barriers to provide  
7 bodily privacy for all residents, including, but not limited to, trans-  
8 gender or gender-nonconforming residents, whenever they are partially or  
9 fully unclothed. In addition, all residents, including, but not limited  
10 to, LGBT or gender-nonconforming residents, shall be informed of and  
11 have the right to refuse to be examined, observed, or treated by any  
12 facility staff when the primary purpose is educational or informational  
13 rather than therapeutic, or for resident appraisal or reappraisal, and  
14 that refusal shall not diminish the resident's access to care for the  
15 primary purpose of diagnosis or treatment.

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

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

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

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

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

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

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

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

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

53 § 4676. Application. Nothing in this article should be construed to  
54 impede existing programs, benefits, or protections for LGBT residents or  
55 residents living with HIV at long-term care facilities.

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

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

12    § 3. This act shall take effect on the one hundred eightieth day after  
13    it shall have become a law. Effective immediately, the addition, amend-  
14    ment and/or repeal of any rule or regulation necessary for the implemen-  
15    tation of this act on its effective date are authorized to be made and  
16    completed on or before such date.