

STATE OF NEW YORK

866--C

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, 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 -- recommitted to the Committee on Aging in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

3 ARTICLE 46-C

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

6 Section 4670. Definitions.

7 4671. Unlawful actions.

8 4672. Recordkeeping.

9 4673. Protection of personally identifiable information.

10 4674. Resident privacy.

11 4675. Training.

12 4676. Application.

13 4677. Violations.

14 § 4670. Definitions. For the purposes of this article:

15 1. "Gender identity or expression" shall mean a person's actual or
16 perceived gender-related identity, appearance, behavior, expression, or
17 other gender-related characteristic regardless of the sex assigned to

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

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1 that person at birth, including, but not limited to, the status of being
2 transgender.

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

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

7 4. "Long-term care facilities" or "facilities" shall mean residential
8 health care facilities as defined in subdivision three of section twen-
9 ty-eight hundred one of this chapter, adult care facilities as defined
10 in subdivision twenty-one of section two of the social services law, and
11 assisted living residences, as defined in article forty-six-B of this
12 chapter, or any facilities which hold themselves out or advertise them-
13 selves as providing assisted living services and which are required to
14 be licensed or certified under the social services law or this chapter.

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

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

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

26 § 4671. Unlawful actions. 1. Except as provided in subdivision two of
27 this section, it shall be unlawful for a long-term care facility or
28 facility staff to take any of the following actions wholly or partially
29 for a discriminatory reason on the basis of a person's actual or
30 perceived sexual orientation, gender identity or expression, or human
31 immunodeficiency virus (HIV) status:

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

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

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

40 (d) prohibit a resident from using, or harass a resident who seeks to
41 use or does use, a restroom available to other persons of the same
42 gender identity, regardless of whether the resident has taken or is
43 taking hormones, has had transition-related surgery, or is making a
44 gender transition or appears to be gender-nonconforming. Harassment
45 includes, but is not limited to, requiring a resident to show identity
46 documents in order to gain entrance to a restroom available to other
47 persons of the same gender identity;

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

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

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

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

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

7 3. Each facility shall post the following notice alongside its current
8 nondiscrimination policy in all places and on all materials where that
9 policy is posted: "(NAME OF FACILITY) DOES NOT DISCRIMINATE AND DOES
10 NOT PERMIT DISCRIMINATION, INCLUDING, BUT NOT LIMITED TO, BULLYING,
11 ABUSE, HARASSMENT, OR DIFFERENTIAL TREATMENT ON THE BASIS OF ACTUAL OR
12 PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV
13 STATUS, OR BASED ON ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF
14 THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTI-
15 TY OR EXPRESSION, OR HIV STATUS. YOU MAY FILE A COMPLAINT WITH THE
16 OFFICE OF THE NEW YORK STATE LONG-TERM CARE OMBUDSMAN PROGRAM (PROVIDE
17 CONTACT INFORMATION) IF YOU BELIEVE THAT YOU HAVE EXPERIENCED THIS KIND
18 OF DISCRIMINATION."

19 § 4672. Recordkeeping. 1. A facility shall employ procedures for
20 recordkeeping, including, but not limited to, records generated at the
21 time of admission, that include the gender identity, correct name, as
22 indicated by the resident, and pronoun of each resident, as indicated by
23 the resident and such records will be kept up to date.

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

29 § 4673. Protection of personally identifiable information. Long-term
30 care facilities shall protect personally identifiable information
31 regarding residents' sexual orientation, whether a resident is transgen-
32 der, a resident's transition history, and HIV status from unauthorized
33 disclosure, as required by the federal Health Insurance Portability and
34 Accountability Act of 1996 (42 U.S.C. Sec. 300gg), if applicable, and
35 any other applicable provision of federal or state law. A facility shall
36 take any steps reasonably necessary to minimize the likelihood of inad-
37 vertent or incidental disclosure of that information to other residents,
38 visitors, or facility staff, except to the minimum extent necessary for
39 facility staff to perform their duties.

40 § 4674. Resident privacy. Long-term care facility staff not directly
41 involved in providing direct care to a resident, including, but not
42 limited to, a transgender or gender-nonconforming resident, shall not be
43 present during physical examination or the provision of personal care to
44 that resident if the resident is partially or fully unclothed without
45 the express permission of that resident, or the resident's legally
46 authorized representative or responsible party. A facility shall use
47 doors, curtains, screens, or other effective visual barriers to provide
48 bodily privacy for all residents, including, but not limited to, trans-
49 gender or gender-nonconforming residents, whenever they are partially or
50 fully unclothed. In addition, all residents, including, but not limited
51 to, LGBT or gender-nonconforming residents, shall be informed of and
52 have the right to refuse to be examined, observed, or treated by any
53 facility staff when the primary purpose is educational or informational
54 rather than therapeutic, or for resident appraisal or reappraisal, and
55 that refusal shall not diminish the resident's access to care for the
56 primary purpose of diagnosis or treatment.

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

5 2. The instruction required by subdivision one of this section shall
6 be provided by an entity or individual with expertise in identifying and
7 addressing the legal and social challenges faced by LGBT people and
8 people living with HIV as they age and reside in long-term care facili-
9 ties and shall teach attitudes, knowledge, and skills that enable facili-
10 ty staff to care effectively for residents who identify as LGBT and
11 residents living with HIV, which may include:

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

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

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

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

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

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

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

38 § 4676. Application. Nothing in this article should be construed to
39 impede existing programs, benefits, or protections for LGBT residents or
40 residents living with HIV at long-term care facilities.

41 § 4677. Violations. 1. A violation of the provisions of this article
42 shall be treated as a violation under section twelve of this chapter.

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

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