STATE OF NEW YORK

2912--C

2019-2020 Regular Sessions

IN SENATE

January 30, 2019

Introduced by Sens. HOYLMAN, KENNEDY, RIVERA, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Aging -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Aging in accordance with Senate Rule 6, sec. 8 -- 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:

Section 1. 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

Section 4670. Definitions.
4671. Unlawful actions.
4672. Recordkeeping.
4673. Protection of personally identifiable information.
4674. Resident privacy.
4675. Training.
4676. Application.
4677. Violations.

§ 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.

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

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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 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.

§ 4675. Training. 1. 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 and patients living with HIV.

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

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

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

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

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

(e) understanding the intersections between systems of oppression and discrimination, recognizing that those who identify as LGBT or are living with HIV 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, in conjunction with the office for the aging, shall develop and implement regulations for the conduct of training as required by this section.

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

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

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 one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.