

STATE OF NEW YORK

372--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 6, 2023

Introduced by M. of A. BRONSON, SEAWRIGHT, DINOWITZ, GLICK, SIMONE, SEPTIMO, KIM, EPSTEIN, BURDICK, SIMON -- 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 public health law, in relation to establishing the lesbian, gay, bisexual and transgender, and people living with HIV 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 section
2 2803-c-2 to read as follows:

3 § 2803-c-2. Lesbian, gay, bisexual and transgender, and people living
4 with HIV long-term care facility residents' bill of rights. 1. Defi-
5 nitions. For the purposes of this section:

6 (a) "Gender identity or expression" shall have the same meaning as
7 defined by section two hundred ninety-two of the executive law.

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

16 (c) "Long-term care facility staff" or "facility staff" shall mean all
17 individuals employed by or contracted directly with the facility.

18 (d) "Resident" shall mean a resident or patient of a long-term care
19 facility.

20 2. (a) Except as provided in subdivision three of this section, it
21 shall be unlawful for a long-term care facility or facility staff to
22 discriminate against any resident on the basis of such resident's actual

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

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1 or perceived sexual orientation, gender identity or expression, or human
2 immunodeficiency virus (HIV) status:

3 (i) deny admission to a long-term care facility, transfer or refuse to
4 transfer a resident within a facility or to another facility, or
5 discharge or evict a resident from a facility;

6 (ii) deny a request by residents to share a room;

7 (iii) where rooms are assigned by gender, assigning, reassigning or
8 refusing to assign a room to a transgender resident other than in
9 accordance with the transgender resident's gender identity, unless at
10 the transgender resident's request;

11 (iv) prohibit a resident from using, or harass a resident who seeks to
12 use or does use, a restroom available to other persons of the same
13 gender identity, regardless of whether the resident has taken or is
14 taking hormones, has had transition-related surgery, or is making a
15 gender transition or appears to be gender-nonconforming. Harassment
16 includes, but is not limited to, requiring a resident to show identity
17 documents in order to gain entrance to a restroom available to other
18 persons of the same gender identity;

19 (v) willfully and repeatedly fail to use a resident's preferred name
20 or pronouns after being clearly informed of the preferred name or
21 pronouns, even if the resident is not present;

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

24 (vii) restrict a resident's right to associate with other residents or
25 with visitors, including the right to consensual expression of intimacy
26 or sexual relations, unless the restriction is uniformly applied to all
27 residents in a nondiscriminatory manner; and

28 (viii) deny or restrict a resident from accessing appropriate medical
29 or nonmedical care, or provide medical or nonmedical care, that unrea-
30 sonably demeans the resident's dignity or causes avoidable discomfort.

31 (b) The provisions of this subdivision shall not apply to the extent
32 that they are incompatible with any professionally reasonable clinical
33 judgment that is based on articulable facts of clinical significance.

34 3. Each facility shall post the following notice alongside its current
35 nondiscrimination policy in all places and on all materials where that
36 policy is posted: "(NAME OF FACILITY) DOES NOT DISCRIMINATE AND DOES
37 NOT PERMIT DISCRIMINATION, INCLUDING, BUT NOT LIMITED TO, BULLYING,
38 ABUSE, HARASSMENT, OR DIFFERENTIAL TREATMENT ON THE BASIS OF ACTUAL OR
39 PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV
40 STATUS, OR BASED ON ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF
41 THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTI-
42 TY OR EXPRESSION, OR HIV STATUS. YOU MAY FILE A COMPLAINT WITH THE
43 OFFICE OF THE NEW YORK STATE LONG-TERM CARE OMBUDSMAN PROGRAM (PROVIDE
44 CONTACT INFORMATION) IF YOU BELIEVE THAT YOU HAVE EXPERIENCED THIS KIND
45 OF DISCRIMINATION."

46 4. (a) A facility shall employ procedures for recordkeeping, includ-
47 ing, but not limited to, records generated at the time of admission,
48 that include the gender identity, correct name, as indicated by the
49 resident, and pronoun of each resident, as indicated by the resident and
50 such records shall be kept up to date.

51 (b) The state long-term care ombudsman program shall establish poli-
52 cies and procedures for recording complaints filed from residents of
53 long-term care facilities pursuant to this section.

54 5. Long-term care facilities shall protect personally identifiable
55 information regarding residents' sexual orientation, whether a resident
56 is transgender, a resident's transition history, and HIV status from

1 unauthorized disclosure, as required by the federal Health Insurance
2 Portability and Accountability Act of 1996, if applicable, and any other
3 applicable provision of federal or state law. A facility shall take any
4 steps reasonably necessary to minimize the likelihood of inadvertent or
5 incidental disclosure of that information to other residents, visitors,
6 or facility staff, except to the minimum extent necessary for facility
7 staff to perform their duties.

8 6. Long-term care facility staff not directly involved in providing
9 direct care to a resident, including, but not limited to, a transgender
10 or gender-nonconforming resident, shall not be present during physical
11 examination or the provision of personal care to such resident if such
12 resident is partially or fully unclothed without the express permission
13 of such resident, or such resident's legally authorized representative
14 or responsible party. A facility shall use doors, curtains, screens, or
15 other effective visual barriers to provide bodily privacy for all resi-
16 dents, including, but not limited to, transgender or gender-nonconform-
17 ing residents, whenever they are partially or fully unclothed. In addi-
18 tion, all residents, including, but not limited to, lesbian, gay,
19 bisexual, transgender or gender-nonconforming residents, shall be
20 informed of and have the right to refuse to be examined, observed, or
21 treated by any facility staff when the primary purpose is educational or
22 informational rather than therapeutic, or for resident appraisal or
23 reappraisal, and that refusal shall not diminish the resident's access
24 to care for the primary purpose of diagnosis or treatment.

25 7. (a) At least once every two years, a long-term care facility shall
26 ensure that every facility staff member who works directly with resi-
27 dents receives training on cultural competency focusing on residents who
28 identify as lesbian, gay, bisexual or transgender and residents living
29 with HIV. Such training shall be developed by the commissioner, in
30 consultation with the director of the office for the aging and entities
31 with expertise in the legal and social challenges faced by lesbian, gay,
32 bisexual or transgender older adults and people living with HIV as they
33 age and reside in long-term care facilities, and shall include, but not
34 be limited to, providing facility staff with the knowledge and skills
35 necessary to provide effective care, in compliance with this section,
36 for residents who identify as lesbian, gay, bisexual or transgender and
37 residents living with HIV.

38 (b) Facility staff required to receive training under this subdivision
39 shall receive the training within six months of hire unless the person
40 provides proof of having received comparable training within the prior
41 two years that the facility determines complies with this subdivision.
42 If the facility accepts the person's proof of prior training, a record
43 of the content of the prior training sufficient to determine its compli-
44 ance with this subdivision shall be kept on site at the facility.

45 8. Nothing in this section should be construed to impede existing
46 programs, benefits, or protections for lesbian, gay, bisexual or trans-
47 gender residents or residents living with HIV at long-term care facili-
48 ties.

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