

# STATE OF NEW YORK

1783--A

Cal. No. 247

2023-2024 Regular Sessions

## IN SENATE

January 13, 2023

Introduced by Sens. HOYLMAN-SIGAL, CLEARE, COONEY, HINCHEY, JACKSON, KENNEDY, MAY, MYRIE, RAMOS, RIVERA, SALAZAR, SCARCELLA-SPANTON, SEPULVEDA, SKOUFIS, STAVISKY, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- 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

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.

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

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1 2. (a) Except as provided in subdivision three of this section, it  
2 shall be unlawful for a long-term care facility or facility staff to  
3 discriminate against any resident on the basis of such resident's actual  
4 or perceived sexual orientation, gender identity or expression, or human  
5 immunodeficiency virus (HIV) status:

6 (i) deny admission to a long-term care facility, transfer or refuse to  
7 transfer a resident within a facility or to another facility, or  
8 discharge or evict a resident from a facility;

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

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

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

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

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

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

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

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

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

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

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

1 5. Long-term care facilities shall protect personally identifiable  
2 information regarding residents' sexual orientation, whether a resident  
3 is transgender, a resident's transition history, and HIV status from  
4 unauthorized disclosure, as required by the federal Health Insurance  
5 Portability and Accountability Act of 1996, if applicable, and any other  
6 applicable provision of federal or state law. A facility shall take any  
7 steps reasonably necessary to minimize the likelihood of inadvertent or  
8 incidental disclosure of that information to other residents, visitors,  
9 or facility staff, except to the minimum extent necessary for facility  
10 staff to perform their duties.

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

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

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

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

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 on or  
56 before such date.