# 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:**

Section 1. The public health law is amended by adding a new section 2803-c-2 to read as follows:

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

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

**(b) "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 article, 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.**

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

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

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

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

(i) 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;

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

(iii) 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;

(iv) 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;

(v) 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;

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

(vii) 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

(viii) 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.

(b) The provisions of this subdivision 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."

4. (a) 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 shall be kept up to date.

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

5. 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, 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.

6. 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 such resident if such resident is partially or fully unclothed without the express permission of such resident, or such 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, lesbian, gay, bisexual, transgender 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.

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

(b) Facility staff required to receive training under this subdivision 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 subdivision. 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 subdivision shall be kept on site at the facility.

8. Nothing in this section should be construed to impede existing programs, benefits, or protections for lesbian, gay, bisexual or transgender residents or residents living with HIV at long-term care facilities.

§ 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 on or before such date.