

SENATE, No. 2545

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Establishes certain requirements concerning rights of lesbian, gay, bisexual, transgender, undesignated/non-binary, questioning, queer, intersex, and HIV-positive residents of long-term care facilities.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning resident rights in long-term care facilities and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

"Gender expression" means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

"Gender identity" means a person's internal, deeply held knowledge or sense of their own gender, regardless of the sex the person was assigned at birth.

"Gender-nonconforming" means a person whose gender expression does not conform to stereotypical expectations of that person's gender.

"Gender transition" means a process in which a person begins to live according to that person's gender identity, rather than the sex the person was assigned at birth, which process may include changing one's clothing, appearance, name, or identification documents, or undergoing medical treatments.

"Intersex" means a person whose sexual or reproductive anatomy or chromosomal pattern is not consistent with typical definitions of male or female.

"LGBTQI" means lesbian, gay, bisexual, transgender, questioning, queer, and intersex.

"Long-term care facility" means a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

"Long-term care facility staff" means all individuals employed by, or contracted directly with, a long-term care facility.

"Resident" means resident or patient of a long-term care facility.

"Queer" means a person whose gender expression, gender identity, or sexual orientation does not conform to dominant expectations or standards.

"Questioning" means a person who is exploring or unsure about the person's own sexual orientation or gender identity or expression.

"Sexual orientation" means a person's romantic or sexual attraction to other people.

"Transgender" means a person whose gender identity or gender expression differs from the sex assigned to the person at birth.

"Undesignated/non-binary" means a person whose gender identity is not exclusively male or female, including, but not limited to, a person whose gender identity is intersex, agender, amalgagender, androgynous, bigender, demigender, genderfluid, genderqueer, neutrois, non-binary, pangender, third sex, transgender, Two Spirit, or otherwise unspecified by the person.

2. a. Except as provided in subsection b. of this section, a long-term care facility and long-term care facility staff shall be prohibited from taking any of the following actions based in whole or in part on a person's actual or perceived sexual orientation, gender identity, gender expression, intersex status, or human immunodeficiency virus (HIV) status:

(1) denying admission to a long-term care facility, transferring or refusing to transfer a resident within a facility or to another facility, or discharging or evicting a resident from a facility;

(2) denying a request by residents to share a room;

(3) Subject to the provisions of paragraph (5) of subsection (e) of 42 CFR s.483.10, where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender or non-binary resident other than in accordance with the transgender or undesignated/non-binary resident's gender identity, unless at the transgender or undesignated/non-binary resident's request;

(4) prohibiting a resident from using, or harassing 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 is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery, or presents as gender-nonconforming. For the purposes of this paragraph, 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;

(5) repeatedly failing to use a resident's chosen name or pronouns after being clearly informed of the chosen name or pronouns;

(6) denying a resident the right to wear or be dressed in clothing, accessories, or cosmetics or to engage in grooming practices that are permitted to any other resident;

(7) restricting a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations;

(8) denying or restricting medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or providing medical or nonmedical care that, to a similarly-situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort; or

(9) refuse or willfully fail to provide any service, care, or reasonable accommodation to a resident or an applicant for services or care.

b. The requirements of this act shall not apply to the extent that compliance with the requirement is incompatible with any professionally-reasonable clinical judgment.

c. Each facility shall post the following notice alongside its current nondiscrimination policy and alongside its written materials providing notice of resident rights pursuant to N.J.A.C.8:39-4.1, in all places and on all materials where that policy or those written materials are posted:

“[Name of facility] does not discriminate and does not permit discrimination, including, but not limited to, bullying, abuse, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, intersex status, or HIV status, or based on association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, or HIV status. You may file a complaint with the Office of the State Long-Term Care Ombudsman, [provide current contact information], if you believe you have experienced this kind of discrimination.”

3. Each long-term care facility shall ensure that resident records, including records generated at the time of admission, include the resident's gender identity and the resident's chosen name and pronouns, as indicated by the resident.

4. a. Unless required by State or federal law, a long-term care facility shall not disclose any personal identifying information regarding: (1) a resident's sexual orientation; (2) whether a resident is transgender or undesignated/non-binary; (3) a resident's gender transition status; (4) a resident's intersex status; or (5) a resident's HIV status.

The facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of such information to other residents, visitors, or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

b. Unless expressly authorized by the resident or the resident's authorized representative, long-term facility staff not directly involved in providing direct care to a resident, including, but not limited to, a transgender, undesignated/non-binary, intersex, or gender-nonconforming resident, shall not be present during a physical examination of, or the provision of personal care to, that resident if the resident is partially or fully unclothed. 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, undesignated/non-binary, intersex, or gender-nonconforming residents, whenever they are partially or fully unclothed.

c. Informed consent shall be required in relation to any non-therapeutic examination or observation of, or treatment provided to, a resident of the facility.

d. Transgender residents shall be provided access to such transition-related assessments, therapy, and treatments as have been recommended by the resident's health care provider, including, but not limited to, transgender-related medical care, including hormone therapy and supportive counseling.

5. A long-term care facility that violates the requirements of this act, or that employs a staff member who violates the requirements of this act, shall be subject to civil penalties or other administrative action as may be provided under Department of Health regulations. Nothing in this act shall be construed to limit the ability to bring any civil, criminal, or administrative action for conduct constituting a violation of any other provision of law.

6. a. Each long-term care facility shall ensure that the administrators and staff at the long-term care facility receive training, on at least a biennial basis, concerning:

(1) caring for LGBTQI seniors and seniors living with HIV; and

(2) preventing discrimination based on sexual orientation, gender identity or expression, intersex status, and HIV status.

b. At a minimum, the training required pursuant to this section shall include:

(1) the definition of the terms commonly associated with sexual orientation, gender identity and expression, intersex status, and HIV;

(2) best practices for communicating with or about LGBTQI seniors and seniors living with HIV, including the use of a resident's chosen name and pronouns;

(3) a description of the health and social challenges historically experienced by LGBTQI seniors and seniors living with HIV, including discrimination when seeking or receiving care at long-term care facilities, and the demonstrated physical and mental health effects within the LGBTQI community associated with such discrimination;

(4) strategies to create a safe and affirming environment for LGBTQI seniors and seniors living with HIV, including suggested changes to facility policies and procedures, forms, signage, communication between residents and their families, activities, and staff training and in-services; and

(5) an overview of the provisions of this act.

c. The training required pursuant to this section shall be provided by an entity that has demonstrated expertise in identifying the legal, social, and medical challenges faced by, and in creating safe and affirming environments for, LGBTQI seniors and seniors living with HIV who reside in long-term care facilities in New Jersey.

d. (1) Each long-term care facility shall designate two employees, including one employee representing management at the facility and one employee representing direct care staff at the facility, to receive in-person training within six months after the effective date of this act, which designated employees shall serve as points of contact for the facility regarding compliance with the provisions of this act and shall develop a general training plan for the facility. In the event a designated employee ceases to be employed by the facility, the facility shall designate another employee, who is representative of the employee group represented by the former designee, who shall complete the in-person training required pursuant to this paragraph, serve as a point of contact for the facility regarding compliance with the provisions of this act, and have joint responsibility for the facility's training plan.

(2) Administrators and staff members currently employed by a long-term care facility, other than an employee designated pursuant to paragraph (1) of this subsection, shall complete the training required pursuant to this section within one year after the effective date of this act. Administrators and staff hired by a long-term care facility after the effective date of this act shall complete the training required pursuant to this section within one year after the date of hire, unless the individual provides documentation demonstrating that the individual has completed equivalent training within the past two years.

(3) Each long-term care facility shall retain records documenting the completion of the training required pursuant to this section by each administrator and staff member at the long-term care facility. Compliance records shall be made available, upon request, to the Department of Health, the Department of Human Services, and the Office of the State Long-Term Care Ombudsman.

e. Each long-term care facility shall assume the cost of providing the training required pursuant to this section.

7. The Commissioner of Health and the Commissioner of Human Services shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations as may be necessary to implement the provisions of this act.

8. This act shall take effect 180 days after the date of enactment.

STATEMENT

This bill establishes certain requirements concerning the rights of residents of long-term care facilities who are lesbian, gay, bisexual, transgender, undesignated/non-binary, questioning, queer, or intersex (LGBTQI).

Specifically, the bill provides that it will be prohibited for a long-term care facility, or for staff at the facility, to take any of the following actions based in whole or in part on a person's actual or perceived sexual orientation, gender identity, gender expression, intersex status, or human immunodeficiency virus (HIV) status:

(1) denying admission to a long-term care facility, transferring or refusing to transfer a resident within a facility or to another facility, or discharging or evicting a resident from a facility;

(2) denying a request by residents to share a room;

(3) where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender or undesignated/non-binary resident other than in accordance with the transgender or undesignated/non-binary resident's gender identity, unless at the transgender or undesignated/non-binary resident's request;

(4) prohibiting a resident from using, or harassing a resident who seeks to use or does use, a restroom available to other residents of the same gender identity, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender confirmation surgery, or presents as gender-nonconforming;

(5) repeatedly failing to use a resident's chosen name or pronouns after being clearly informed of the chosen name or pronouns;

(6) denying a resident the right to wear or be dressed in clothing, accessories, or cosmetics or to engage in grooming practices that are permitted to any other resident;

(7) restricting a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations;

(8) denying or restricting medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or providing care that, to a similarly-situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort; or

(9) refusing or willfully failing to provide any service, care, or reasonable accommodation to a resident or an applicant for services or care.

All facilities will be required to prominently post notice stating that the facility does not discriminate and does not permit discrimination, including, but not limited to, bullying, abuse, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, intersex status, or HIV status, or based on association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, or HIV status. The notice will include the contact information for the Office of the State Long-Term Care Ombudsman.

Each long-term care facility will be required to ensure that resident records, including records generated at the time of admission, include the resident's gender identity and the resident's chosen name and pronouns, as indicated by the resident.

Unless otherwise required by State or federal law, long-term care facilities will be prohibited from disclosing any personal identifying information regarding: a resident's sexual orientation; whether a resident is transgender; a resident's transition history; a resident's intersex status; or a resident's HIV status. Facilities will be required to take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of such information to other residents, visitors, or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

Long-term facility staff not directly involved in providing direct care to a resident, including, but not limited to, a transgender, undesignated/non-binary, intersex, or gender non-conforming resident, may not be present during physical examination of, or the provision of personal care to, the resident if the resident is partially or fully unclothed, unless the resident expressly authorizes the staff member to be present. Facilities are to use doors, curtains, screens, or other effective visual barriers to provide bodily privacy for all residents whenever they are partially or fully unclothed. Informed consent will be required for all non-therapeutic examinations or observations of, or treatment provided to, a resident of the facility.

Transcare providers of long-term care facilities will be provided access to such transition-related assessments, therapy, and treatments as have been recommended by the resident's health care provider, including, but not limited to, transgender-related medical care, such as hormone therapy and supportive counseling.

The requirements of the bill will not apply to the extent that compliance with the requirement is incompatible with any professionally-reasonable clinical judgment.

The bill requires each long-term care facility to ensure that the administrators and staff at the facility receive training, on at least a biennial basis, concerning care for LGBTQI seniors and seniors living with HIV and preventing discrimination based on sexual orientation, gender identity or expression, intersex status, or HIV status. The training is to be provided by an entity that has demonstrated expertise in identifying the legal, social, and medical challenges faced by, and in creating safe and affirming environments for, LGBTQI seniors and seniors living with HIV who reside in long-term care facilities in New Jersey.

Each facility will be required to designate two employees, with one representing management and one representing direct care staff, who will receive in-person training within six months after the effective date of the bill, which employees will serve as points of contact at the facility concerning compliance with the provisions of the bill and will be responsible for developing a general training plan for the facility. All other employees of the facility will be required to complete the training within one year after the effective date of the bill, and new employees will be required to complete the training within one year of the employee's date of hire. Facilities are to document completion of the training by each administrator and staff member. Each facility will be responsible for the cost of providing the training to its employees.

A long-term care facility that violates the requirements of the bill, or that employs a staff member who violates the requirements of the bill, will be subject to penalties or other administrative actions as are provided by Department of Health regulations. Nothing in the bill is to be construed to limit the ability to bring any civil, criminal, or administrative action for conduct constituting a violation of any other provision of law.