ASSEMBLY, No. 680

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Establishes certain requirements concerning rights of lesbian, gay, bisexual, transgender, questioning, queer, and intersex residents of long-term care facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 6/22/2020)

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 assigned at birth" means the gender that a person was thought to be at birth, which is typically recorded on the person's original birth certificate, and which may or may not match the person's gender identity.

"Gender binary" means a social system that constructs gender according to two discrete and opposite categories: male and female.

"Gender expression" means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned gender at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice, or mannerisms.

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

"Gender-nonconforming" means a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act.

"Gender transition" means a process in which a person begins to live according to that person's gender identity, rather than the gender the person was assigned at birth. Possible steps in a gender transition may or may not include changing one's clothing, appearance, and name, and in some cases, changing 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.

"LGBTQI harassment" means conduct critical of a person's sexual orientation, gender identity, or gender expression that may include, but is not limited to: name-calling; disrespectful gestures, jokes or comments; inappropriate touching; threats of physical or emotional acts or negative consequences, including religious condemnation; bullying; pantomiming inappropriate behavior; shunning or isolation; or attempting to change a person's sexual orientation, gender identity, or gender expression.

"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.

"Non-binary" means a person whose gender is not exclusively male or female, including a person who identifies with a gender other than male or female, with more than one gender, or with no gender at all. Persons whose gender is not male or female may use other terms to describe themselves, such as gender fluid, agender, bigender, or gender expansive.

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

"Queer" means a person whose gender expression, gender identity, or sexual orientation do not conform to dominant expectations or norms, or who refuses to assimilate to such expectations or norms.

"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, gender expression, or both, is different from cultural expectations based on the gender the person was assigned at birth, and does not imply any specific sexual orientation.

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

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, or human immunodeficiency virus (HIV) status:

(1) 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;

(2) Deny 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 resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request;

(4) 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 is making a gender transition or appears to be 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) Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns;

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

(7) Restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner. This paragraph shall not preclude a facility from banning or imposing restrictions on sexual relations among residents at the facility, provided that the ban or restriction is applied uniformly and in a nondiscriminatory manner; or

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

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 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, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, 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. 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 preferred 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 personally identifiable information regarding: (1) a resident's sexual orientation; (2) whether a resident is transgender; (3) a resident's transition history; (4) or 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 patient or the patient's authorized representative, long-term 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 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 or gender-nonconforming residents, whenever they are partially or fully unclothed.

c. All residents, including, but not limited to, LGBT residents, shall have the right to refuse to be examined, observed, or treated by any facility staff when the primary purpose of the examination, observation, or treatment is educational or informational, rather than therapeutic, or when the primary purpose of the examination, observation, or treatment is for resident appraisal or reappraisal. Residents shall be informed of this right to refuse non-therapeutic examination, observation, or treatment by the facility staff member performing the examination, observation, or treatment prior to commencing the examination, observation, or treatment. A refusal to undergo non-therapeutic examination, observation, or treatment shall not diminish the resident's access to care for the primary purpose of diagnosis or treatment.

d. LGBTQI residents shall be provided access to medical and mental health care providers who are knowledgeable about the health care needs of the LGBTQI population.

e. 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 liable to a civil penalty of no more than $500 for a first offense, no more than $1,000 for a second offense occurring within a 12-month period, and no more than $5,000 for a third or subsequent offense occurring within a 12-month period. For the purposes of this subsection, each violation shall constitute a separate offense. The civil penalty shall be collected in a summary proceeding, brought in the name of the State in a court of competent jurisdiction pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). 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. The Commissioner of Health 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.

7. 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, 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, or human immunodeficiency virus (HIV) status:

(1) 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;

(2) Deny 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 resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request;

(4) 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 is making a gender transition or appears to be gender-nonconforming;

(5) Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns;

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

(7) Restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; provided that facilities will not be precluded from imposing uniform, nondiscriminatory bans or restrictions on all sexual relations at the facility; or

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

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, 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 preferred 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 personally identifiable information regarding: a resident's sexual orientation; whether a resident is transgender; a resident's transition history; 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 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 patient 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. In addition, all residents will have the right to refuse to be examined, observed, or treated by any facility staff when the primary purpose of the examination, observation, or treatment is educational or informational, rather than therapeutic, or when the primary purpose of the examination, observation, or treatment is for resident appraisal or reappraisal; a refusal will not diminish the resident's access to care for the primary purpose of diagnosis or treatment. Residents are to be informed of this right of refusal by the staff member performing the examination, observation, or treatment before commencing the examination, observation, or treatment.

LGBTQI residents of long-term care facilities are to be provided access to medical and mental health care providers who are knowledgeable about the health care needs of the LGBTQI population.

Transgender residents 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.

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 liable to a civil penalty of no more than $500 for a first offense, no more than $1,000 for a second offense occurring within a 12-month period, and no more than $5,000 for a third or subsequent offense occurring within a 12-month period. Each violation will constitute a separate offense. 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.