

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4288

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2020

The Assembly Aging and Senior Services Committee reports favorably Assembly Bill No. 4288.

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.

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.

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.