

SENATE, No. 1926

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex and Morris)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Gender assigned at birth” means the gender that a person was
9 thought to be at birth, which is typically recorded on the person’s
10 original birth certificate, and which may or may not match the
11 person’s gender identity.

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

14 “Gender expression” means a person’s gender-related appearance
15 and behavior, whether or not stereotypically associated with the
16 person’s assigned gender at birth. It is the manner in which a
17 person represents or expresses their gender to others, such as
18 through their behavior, clothing, hairstyles, activities, voice, or
19 mannerisms.

20 “Gender identity” means a person’s internal, deeply held
21 knowledge or sense of their own gender, regardless of the gender
22 the person was assigned at birth.

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

26 “Gender transition” means a process in which a person begins to
27 live according to that person’s gender identity, rather than the
28 gender the person was assigned at birth. Possible steps in a gender
29 transition may or may not include changing one’s clothing,
30 appearance, and name, and in some cases, changing identification
31 documents or undergoing medical treatments.

32 “Intersex” means a person whose sexual or reproductive anatomy
33 or chromosomal pattern is not consistent with typical definitions of
34 male or female.

35 “LGBTQI” means lesbian, gay, bisexual, transgender,
36 questioning, queer, and intersex.

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

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

1 “Long-term care facility staff” means all individuals employed
2 by, or contracted directly with, a long-term care facility.

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

9 “Resident” means a resident or patient of a long-term care
10 facility.

11 “Queer” means a person whose gender expression, gender
12 identity, or sexual orientation do not conform to dominant
13 expectations or norms, or who refuses to assimilate to such
14 expectations or norms.

15 “Questioning” means a person who is exploring or unsure about
16 the person’s own sexual orientation or gender identity or
17 expression.

18 “Sexual orientation” means a person’s romantic or sexual
19 attraction to other people.

20 “Transgender” means a person whose gender identity, gender
21 expression, or both, is different from cultural expectations based on
22 the gender the person was assigned at birth, and does not imply any
23 specific sexual orientation.

24 “Transgender person” means a person whose gender identity
25 differs from the gender assigned to the person at birth.

26

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

33 (1) Deny admission to a long-term care facility, transfer or
34 refuse to transfer a resident within a facility or to another facility, or
35 discharge or evict a resident from a facility;

36 (2) Deny a request by residents to share a room;

37 (3) Where rooms are assigned by gender, assigning, reassigning,
38 or refusing to assign a room to a transgender resident other than in
39 accordance with the transgender resident’s gender identity, unless at
40 the transgender resident’s request;

41 (4) Prohibit a resident from using, or harass a resident who
42 seeks to use or does use, a restroom available to other persons of the
43 same gender identity, regardless of whether the resident is making a
44 gender transition, has taken or is taking hormones, has undergone
45 gender affirmation surgery, or appears to be gender-nonconforming.
46 For the purposes of this paragraph, harassment includes, but is not
47 limited to, requiring a resident to show identity documents in order

1 to gain entrance to a restroom available to other persons of the same
2 gender identity;

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

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

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

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

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

24 c. Each facility shall post the following notice alongside its
25 current nondiscrimination policy in all places and on all materials
26 where that policy is posted:

27
28 "[Name of facility] does not discriminate and does
29 not permit discrimination, including, but not limited
30 to, bullying, abuse, or harassment, on the basis of
31 actual or perceived sexual orientation, gender
32 identity, gender expression, intersex status or
33 condition, or HIV status, or based on association with
34 another individual on account of that individual's
35 actual or perceived sexual orientation, gender
36 identity, gender expression, intersex status or
37 condition, or HIV status. You may file a complaint
38 with the Office of the State Long-Term Care
39 Ombudsman, [provide current contact information], if
40 you believe you have experienced this kind of
41 discrimination."
42

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

1 4. a. Unless required by State or federal law, a long-term care
2 facility shall not disclose any personally identifiable information
3 regarding: (1) a resident's sexual orientation; (2) whether a resident
4 is transgender; (3) a resident's transition history; (4) a resident's
5 intersex status or condition; or (5) a resident's HIV status.

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

11 b. Unless expressly authorized by the patient or the patient's
12 authorized representative, long-term facility staff not directly
13 involved in providing direct care to a resident, including, but not
14 limited to, a transgender, intersex, or gender-nonconforming
15 resident, shall not be present during physical examination of, or the
16 provision of personal care to, that resident if the resident is partially
17 or fully unclothed. A facility shall use doors, curtains, screens, or
18 other effective visual barriers to provide bodily privacy for all
19 residents, including, but not limited to, transgender, intersex, or
20 gender-nonconforming residents, whenever they are partially or
21 fully unclothed.

22 c. All residents, including, but not limited to, LGBTQI
23 residents, shall have the right to refuse to be examined, observed, or
24 treated by any facility staff when the primary purpose of the
25 examination, observation, or treatment is educational or
26 informational, rather than therapeutic, or when the primary purpose
27 of the examination, observation, or treatment is for resident
28 appraisal or reappraisal. Residents shall be informed of this right to
29 refuse non-therapeutic examination, observation, or treatment by
30 the facility staff member performing the examination, observation,
31 or treatment prior to commencing the examination, observation, or
32 treatment. A refusal to undergo non-therapeutic examination,
33 observation, or treatment shall not diminish the resident's access to
34 care for the primary purpose of diagnosis or treatment.

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

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

43

44 5. A long-term care facility that violates the requirements of
45 this act, or that employs a staff member who violates the
46 requirements of this act, shall be liable to a civil penalty of no more
47 than \$500 for a first offense, no more than \$1,000 for a second
48 offense occurring within a 12-month period, and no more than

1 \$5,000 for a third or subsequent offense occurring within a 12-
2 month period. For the purposes of this subsection, each violation
3 shall constitute a separate offense. The civil penalty shall be
4 collected in a summary proceeding, brought in the name of the State
5 in a court of competent jurisdiction pursuant to the "Penalty
6 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
7 Nothing in this act shall be construed to limit the ability to bring
8 any civil, criminal, or administrative action for conduct constituting
9 a violation of any other provision of law.

10
11 6. a. Each long-term care facility shall ensure that the
12 administrators and staff at the long-term care facility receive
13 training, on at least a biennial basis, concerning:

14 (1) Caring for LGBTQI seniors and seniors living with HIV; and
15 (2) preventing discrimination based on sexual orientation,
16 gender identity or expression, intersex status or condition, and HIV
17 status.

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

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

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

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

31 (4) strategies to create a safe and affirming environment for
32 LGBTQI seniors and seniors living with HIV, including information
33 on how staff behavior toward such seniors has historically affected
34 access to health care for LGBTQI seniors and seniors living with
35 HIV.

36 c. The training required pursuant to this section shall be
37 provided by an entity that has expertise in identifying the legal,
38 social, and medical challenges faced by LGBTQI seniors and
39 seniors living with HIV who reside in long-term care facilities.

40 d. (1) Administrators and staff currently employed by a long-
41 term care facility shall complete the training required pursuant to
42 this section within six months after the effective date of this act.
43 Administrators and staff hired by a long-term care facility after the
44 effective date of this act shall complete the training required
45 pursuant to this section within six months after the date of hire,
46 unless the individual provides documentation demonstrating the
47 individual has completed equivalent training within the past two
48 years.

(2) 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. For the purposes of administering the federal “Older Americans Act of 1965,” Pub.L. 89-73 (42 U.S.C. s.3001 et seq.), the Division on Aging Services in the Department of Human Services shall treat LGBTQI seniors and seniors living with HIV as older individuals who have the greatest social need. The division shall apply for such State plan amendments or waivers as shall be necessary to implement the provisions of this section.

8. 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.

9. 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, intersex status or condition, 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

1 same gender identity, regardless of whether the resident is making a
2 gender transition, has taken or is taking hormones, has undergone
3 gender confirmation surgery, or appears to be gender-
4 nonconforming;

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

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

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

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

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

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

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

45 Long-term facility staff not directly involved in providing direct
46 care to a resident, including, but not limited to, a transgender,
47 intersex, or gender non-conforming resident, may not be present
48 during physical examination of, or the provision of personal care to,

1 the resident if the resident is partially or fully unclothed, unless the
2 patient expressly authorizes the staff member to be present.
3 Facilities are to use doors, curtains, screens, or other effective
4 visual barriers to provide bodily privacy for all residents whenever
5 they are partially or fully unclothed. In addition, all residents will
6 have the right to refuse to be examined, observed, or treated by any
7 facility staff when the primary purpose of the examination,
8 observation, or treatment is educational or informational, rather
9 than therapeutic, or when the primary purpose of the examination,
10 observation, or treatment is for resident appraisal or reappraisal; a
11 refusal will not diminish the resident's access to care for the
12 primary purpose of diagnosis or treatment. Residents are to be
13 informed of this right of refusal by the staff member performing the
14 examination, observation, or treatment before commencing the
15 examination, observation, or treatment.

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

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

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

28 The bill, as amended, requires each long-term care facility to
29 ensure that the administrators and staff at the facility receive
30 training, on at least a biennial basis, concerning care for LGBTQI
31 seniors and seniors living with HIV and preventing discrimination
32 based on sexual orientation, gender identity or expression, intersex
33 status or condition, and HIV status. The training is to be provided
34 by an entity that has expertise in identifying the legal, social, and
35 medical challenges faced by LGBTQI seniors and seniors living
36 with HIV who reside in long-term care facilities. The training will
37 be a condition of new or ongoing employment at a long-term care
38 facility, and facilities are to document completion of the training by
39 each administrator and staff member. Long-term care facilities are
40 to assume the cost of providing the training.

41 The bill provides that, for the purposes of administering the
42 federal "Older Americans Act of 1965," Pub.L. 89-73 (42 U.S.C.
43 s.3001 et seq.), the Division on Aging Services in the Department
44 of Human Services will be required to treat LGBTQI seniors and
45 seniors living with HIV as older individuals who have the greatest
46 social need. The division is to apply for any State plan amendments
47 or waivers as are necessary to implement this requirement. States
48 are awarded grants under the "Older Americans Act" to fund

1 various initiatives for senior citizens. The grants are distributed by
2 each state pursuant to a federally-approved formula that focuses on
3 individuals with the greatest economic need and individuals with
4 the greatest social need, including those with physical or mental
5 disabilities, those experiencing language barriers, and those
6 experiencing cultural, social, or geographic isolation.

7 A long-term care facility that violates the requirements of the
8 bill, or that employs a staff member who violates the requirements
9 of the bill, will be liable to a civil penalty of no more than \$500 for
10 a first offense, no more than \$1,000 for a second offense occurring
11 within a 12-month period, and no more than \$5,000 for a third or
12 subsequent offense occurring within a 12-month period. Each
13 violation will constitute a separate offense. Nothing in the bill is to
14 be construed to limit the ability to bring any civil, criminal, or
15 administrative action for conduct constituting a violation of any
16 other provision of law.