

SENATE, No. 2545

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 8, 2020

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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.

(Sponsorship Updated As Of: 1/11/2021)

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

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

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

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

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

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

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

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

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

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

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

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

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

44 "Undesignated/non-binary" means a person whose gender
45 identity is not exclusively male or female, including, but not limited
46 to, a person whose gender identity is intersex, agender,
47 amalgagender, androgynous, bigender, demigender, genderfluid,

1 genderqueer, neutrois, non-binary, pangender, third sex,
2 transgender, Two Spirit, or otherwise unspecified by the person.

3

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

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

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

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

20 (4) prohibiting a resident from using, or harassing a resident
21 who seeks to use or does use, a restroom available to other persons
22 of the same gender identity, regardless of whether the resident is
23 making a gender transition, has taken or is taking hormones, has
24 undergone gender affirmation surgery, or presents as gender-
25 nonconforming. For the purposes of this paragraph, harassment
26 includes, but is not limited to, requiring a resident to show identity
27 documents in order to gain entrance to a restroom available to other
28 persons of the same gender identity;

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

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

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

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

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

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

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

6
7 “[Name of facility] does not discriminate and does not permit
8 discrimination, including, but not limited to, bullying, abuse, or
9 harassment, on the basis of actual or perceived sexual orientation,
10 gender identity, gender expression, intersex status, or HIV status, or
11 based on association with another individual on account of that
12 individual’s actual or perceived sexual orientation, gender identity,
13 gender expression, intersex status, or HIV status. You may file a
14 complaint with the Office of the State Long-Term Care
15 Ombudsman, [provide current contact information], if you believe
16 you have experienced this kind of discrimination.”
17

18 3. Each long-term care facility shall ensure that resident
19 records, including records generated at the time of admission,
20 include the resident’s gender identity and the resident’s chosen
21 name and pronouns, as indicated by the resident.
22

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

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

34 b. Unless expressly authorized by the resident or the resident’s
35 authorized representative, long-term facility staff not directly
36 involved in providing direct care to a resident, including, but not
37 limited to, a transgender, undesignated/non-binary, intersex, or
38 gender-nonconforming resident, shall not be present during a
39 physical examination of, or the provision of personal care to, that
40 resident if the resident is partially or fully unclothed. A facility
41 shall use doors, curtains, screens, or other effective visual barriers
42 to provide bodily privacy for all residents, including, but not limited
43 to, transgender, undesignated/non-binary, intersex, or gender-
44 nonconforming residents, whenever they are partially or fully
45 unclothed.

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

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

6
7 5. A long-term care facility that violates the requirements of
8 this act, or that employs a staff member who violates the
9 requirements of this act, shall be subject to civil penalties or other
10 administrative action as may be provided under Department of
11 Health regulations. Nothing in this act shall be construed to limit
12 the ability to bring any civil, criminal, or administrative action for
13 conduct constituting a violation of any other provision of law.

14
15 6. a. Each long-term care facility shall ensure that the
16 administrators and staff at the long-term care facility receive
17 training, on at least a biennial basis, concerning:

- 18 (1) caring for LGBTQI seniors and seniors living with HIV; and
19 (2) preventing discrimination based on sexual orientation,
20 gender identity or expression, intersex status, and HIV status.

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

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

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

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

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

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

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

47 d. (1) Each long-term care facility shall designate two
48 employees, including one employee representing management at the

1 facility and one employee representing direct care staff at the
2 facility, to receive in-person training within six months after the
3 effective date of this act, which designated employees shall serve as
4 points of contact for the facility regarding compliance with the
5 provisions of this act and shall develop a general training plan for
6 the facility. In the event a designated employee ceases to be
7 employed by the facility, the facility shall designate another
8 employee, who is representative of the employee group represented
9 by the former designee, who shall complete the in-person training
10 required pursuant to this paragraph, serve as a point of contact for
11 the facility regarding compliance with the provisions of this act, and
12 have joint responsibility for the facility's training plan.

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

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

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

31

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

37

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

40

41

42

STATEMENT

43

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

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

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

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

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

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

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

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

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

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

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

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

46 Each long-term care facility will be required to ensure that
47 resident records, including records generated at the time of

1 admission, include the resident's gender identity and the resident's
2 chosen name and pronouns, as indicated by the resident.

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

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

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

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

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

41 Each facility will be required to designate two employees, with
42 one representing management and one representing direct care staff,
43 who will receive in-person training within six months after the
44 effective date of the bill, which employees will serve as points of
45 contact at the facility concerning compliance with the provisions of
46 the bill and will be responsible for developing a general training
47 plan for the facility. All other employees of the facility will be
48 required to complete the training within one year after the effective

1 date of the bill, and new employees will be required to complete the
2 training within one year of the employee's date of hire. Facilities
3 are to document completion of the training by each administrator
4 and staff member. Each facility will be responsible for the cost of
5 providing the training to its employees.

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