

[First Reprint]

SENATE, No. 3484

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

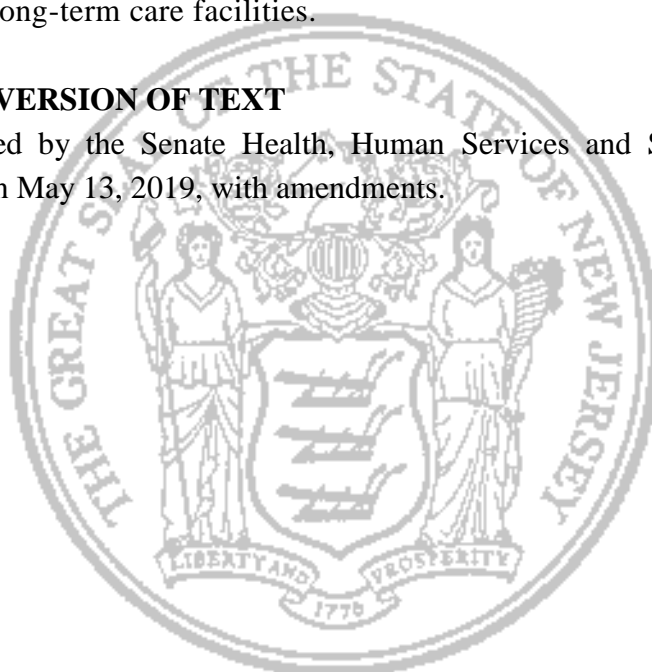
Senators Weinberg and Gopal

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 reported by the Senate Health, Human Services and Senior Citizens Committee on May 13, 2019, with amendments.



(Sponsorship Updated As Of: 5/14/2019)

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 person
 17 represents or expresses their gender to others, such as through their
 18 behavior, clothing, hairstyles, activities, voice, or mannerisms.

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted May 13, 2019.

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,’¹ 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,’¹ or appears to be gender-
46 nonconforming. For the purposes of this paragraph, harassment
47 includes, but is not limited to, requiring a resident to show identity
48 documents in order to gain entrance to a restroom available to other
49 persons of the same gender identity;

1 (5) Willfully and repeatedly fail to use a resident's ¹**["preferred]**
2 chosen¹ name or pronouns after being clearly informed of the
3 ¹**["preferred]** chosen¹ name or pronouns;

4 (6) Deny a resident the right to wear or be dressed in clothing,
5 accessories, or cosmetics ¹or to engage in grooming practices¹ that
6 are permitted to any other resident;

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

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

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

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

25
26 "[Name of facility] does not discriminate and does not permit
27 discrimination, including, but not limited to, bullying, abuse, or
28 harassment, on the basis of actual or perceived sexual orientation,
29 gender identity, gender expression, ¹intersex status or condition,¹ or
30 HIV status, or based on association with another individual on
31 account of that individual's actual or perceived sexual orientation,
32 gender identity, gender expression, ¹intersex status or condition,¹ or
33 HIV status. You may file a complaint with the Office of the State
34 Long-Term Care Ombudsman, [provide current contact
35 information], if you believe you have experienced this kind of
36 discrimination."

37
38 3. Each long-term care facility shall ensure that resident
39 records, including records generated at the time of admission,
40 include the resident's gender identity and the resident's
41 ¹**["preferred]** chosen¹ name and pronouns, as indicated by the
42 resident.

43
44 4. a. Unless required by State or federal law, a long-term care
45 facility shall not disclose any personally identifiable information
46 regarding: (1) a resident's sexual orientation; (2) whether a resident
47 is transgender; (3) a resident's transition history; (4) ¹a resident's
48 intersex status or condition; ¹ or ¹(5)¹ a resident's HIV status.

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

6 b. Unless expressly authorized by the patient or the patient's
7 authorized representative, long-term facility staff not directly
8 involved in providing direct care to a resident, including, but not
9 limited to, a transgender ¹, intersex,¹ or gender-nonconforming
10 resident, shall not be present during physical examination of, or the
11 provision of personal care to, that resident if the resident is partially
12 or fully unclothed. A facility shall use doors, curtains, screens, or
13 other effective visual barriers to provide bodily privacy for all
14 residents, including, but not limited to, transgender ¹, intersex,¹ or
15 gender-nonconforming residents, whenever they are partially or
16 fully unclothed.

17 c. All residents, including, but not limited to, **'[LGBT]**
18 LGBTQI¹ residents, shall have the right to refuse to be examined,
19 observed, or treated by any facility staff when the primary purpose
20 of the examination, observation, or treatment is educational or
21 informational, rather than therapeutic, or when the primary purpose
22 of the examination, observation, or treatment is for resident
23 appraisal or reappraisal. Residents shall be informed of this right to
24 refuse non-therapeutic examination, observation, or treatment by
25 the facility staff member performing the examination, observation,
26 or treatment prior to commencing the examination, observation, or
27 treatment. A refusal to undergo non-therapeutic examination,
28 observation, or treatment shall not diminish the resident's access to
29 care for the primary purpose of diagnosis or treatment.

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

33 e. Transgender residents shall be provided access to such
34 transition-related assessments, therapy ¹,¹ and treatments as have
35 been recommended by the resident's health care provider,
36 including, but not limited to, transgender-related medical care,
37 including hormone therapy and supportive counseling.

38

39 5. A long-term care facility that violates the requirements of
40 this act, or that employs a staff member who violates the
41 requirements of this act, shall be liable to a civil penalty of no more
42 than \$500 for a first offense, no more than \$1,000 for a second
43 offense occurring within a 12-month period, and no more than
44 \$5,000 for a third or subsequent offense occurring within a 12-
45 month period. For the purposes of this subsection, each violation
46 shall constitute a separate offense. The civil penalty shall be
47 collected in a summary proceeding, brought in the name of the State
48 in a court of competent jurisdiction pursuant to the "Penalty

1 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
2 Nothing in this act shall be construed to limit the ability to bring
3 any civil, criminal, or administrative action for conduct constituting
4 a violation of any other provision of law.

5
6 ¹6. a. Each long-term care facility shall ensure that the
7 administrators and staff at the long-term care facility receive
8 training, on at least a biennial basis, concerning:

9 (1) Caring for LGBTQI seniors and seniors living with HIV; and

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

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

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

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

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

26 (4) strategies to create a safe and affirming environment for
27 LGBTQI seniors and seniors living with HIV, including information
28 on how staff behavior toward such seniors has historically affected
29 access to health care for LGBTQI seniors and seniors living with
30 HIV.

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

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

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

1 e. Each long-term care facility shall assume the cost of
2 providing the training required pursuant to this section.¹

3
4 ¹7. For the purposes of administering the federal “Older
5 Americans Act of 1965,” Pub. L. 89-73 (42 U.S.C. s.3001 et seq.),
6 the Division on Aging Services in the Department of Human
7 Services shall treat LGBTQI seniors and seniors living with HIV as
8 older individuals who have the greatest social need. The division
9 shall apply for such State plan amendments or waivers as shall be
10 necessary to implement the provisions of this section.¹

11
12 ¹**[6.]** 8.¹ The Commissioner of Health ¹and the Commissioner
13 of Human Services¹ shall, pursuant to the “Administrative
14 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules
15 and regulations as may be necessary to implement the provisions of
16 this act.

17
18 ¹**[7.]** 9.¹ This act shall take effect 180 days after the date of
19 enactment.