

SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO **SENATE, No. 3484**

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 3484.

As amended by the committee, 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 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 appears to be gender-nonconforming;

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

(6) Deny 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) 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, intersex status or condition, 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 personally identifiable information regarding: a resident's sexual orientation; whether a resident is transgender; a resident's transition history; a resident's intersex status or condition; 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, 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 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.

The bill, as amended, 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 condition, and HIV status. The training is to be provided by an entity that has expertise in identifying the legal, social, and medical challenges faced by LGBTQI seniors and seniors living with HIV who reside in long-term care facilities. The training will be a condition of new or ongoing employment at a long-term care facility, and facilities are to document completion of the training by each administrator and staff member. Long-term care facilities are to assume the cost of providing the training.

As amended by the committee, the bill provides that, 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 will be required to treat LGBTQI seniors and seniors living with HIV as older individuals who have the greatest social need. The division is to apply for any State plan amendments or waivers as are necessary to implement this requirement. States are awarded grants under the "Older Americans Act" to fund various initiatives for senior citizens. The grants are distributed by each state pursuant to a federally-approved formula that focuses on individuals with the greatest economic need and individuals with the greatest social need, including those with physical or mental disabilities, those experiencing language barriers, and those experiencing cultural, social, or geographic isolation.

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.

COMMITTEE AMENDMENTS:

The committee amendments include references to intersex status or condition throughout the bill.

The committee amendments revise the restroom access protections for gender non-conforming residents and residents undergoing a gender transition to clarify that the protections apply regardless of 1.

a. The Commissioner of Health shall establish a public awareness campaign to foster community-wide discussions and to promote early conversations about advance care planning and patient preferences to improve decision-making in relation to end-of-life care.

b. The commissioner, in establishing the public awareness campaign, shall develop outreach efforts and provide information and educational materials to the general public on various end-of-life care topics including, but not limited to:

(1) how to effectively conduct advance care planning conversations with family members, friends, caregivers, healthcare providers, and other individuals involved in a patient's care, regarding personal goals, preferences, and the type of care desired ¹ **["at the end-of-life"]** during the final stages of the patient's life¹ ;

(2) how community leaders and members can appropriately, and in an ethnically, culturally, and linguistically sensitive way, facilitate community-wide discussions regarding advance care planning and end-of-life care;

(3) definitions, procedures, and other information related to advance directives, established pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.);

(4) the differences between the two types of advance directives, namely proxy directives and instructive directives;

(5) the importance of having an advance directive, or advance directives, and the differences between advance directives and ¹ **["Practitioner"]** Physician¹ Orders for Life-Sustaining Treatment ¹ **["POLST"]** forms;

(6) definitions, procedures, and other information related to ¹ **["Practitioner Orders for Life-Sustaining Treatment"]** POLST¹ forms, established pursuant to P.L.2011, c.145 (C.26:2H-129 et seq.);

(7) standardized and approved definitions of, and differences between, palliative care, hospice care, comfort care, and other end-of-life-care terms; and

(8) any other topics or matters related to advance care planning and end-of-life care ¹ **[""]**¹ as the commissioner may deem necessary.

c. Information provided under the public awareness campaign shall be disseminated using ethnically, culturally, and linguistically appropriate means, in a manner that demonstrates respect for individual dignity and sensitivity for ethnic, cultural, and linguistic differences. Where feasible and appropriate, the information shall be made available in a variety of languages.

d. As necessary, the commissioner shall partner with, and expand upon, community-based initiatives and training programs that educate the general public on advance care planning and end-of-life care. whether the resident has taken or is taking hormones or has undergone gender confirmation surgery.

The committee amendments clarify that no resident may be denied the right to engage in grooming practices permitted to any other resident.

The committee amendments update references to a resident's "preferred name" to read "chosen name."

The committee amendments add a requirement that long-term care facility administrators and staff members complete training concerning caring for LGBTQI seniors and seniors living with HIV, and preventing discrimination based on sexual orientation, gender identity or expression, intersex status or condition, and HIV status. The amendments include specific requirements for the training.

The committee amendments provide that, 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 will be required to treat LGBTQI seniors and seniors living with HIV as older individuals who have the greatest social need. The division is to apply for any State plan amendments or waivers as may be necessary for implementation.

The committee amendments update the synopsis to reflect the scope of the bill as amended by the committee.