

**26:2H-12.101 to 26:2H-12.107**  
**LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF:** 2021                      **CHAPTER:** 33

**NJSA:** 26:2H-12.101 to 26:2H-12.107 (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.)

**BILL NO:** S2545                      (Substituted for A4288)

**SPONSOR(S)** Singleton, Troy and others

**DATE INTRODUCED:** 6/8/2020

**COMMITTEE:**                      **ASSEMBLY:** ---

**SENATE:** Health, Human Services & Senior Citizens

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                      **ASSEMBLY:** 1/11/2021

**SENATE:** 12/17/2020

**DATE OF APPROVAL:** 3/3/2021

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Introduced bill enacted) Yes

**S2545**

**INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:** No

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A4288**

**INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:** Yes

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

Gibbons, Sammy and Alex Biese. "MURPHY SIGNS MEASURE PROTECTING LGBTQ SENIORS." Record, The (Hackensack, NJ), March 5, 2021: A4.

Nieto-Munoz, Sophie. "Law to protect LGBTQ nursing home residents' rights." South Jersey Times (NJ), March 5, 2021: 003.

RH/CL

P.L. 2021, CHAPTER 33, *approved March 3, 2021*  
Senate, No. 2545

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.

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

3 "Undesignated/non-binary" means a person whose gender  
4 identity is not exclusively male or female, including, but not limited  
5 to, a person whose gender identity is intersex, agender,  
6 amalgagender, androgynous, bigender, demigender, genderfluid,  
7 genderqueer, neutrois, non-binary, pangender, third sex,  
8 transgender, Two Spirit, or otherwise unspecified by the person.

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

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

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

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

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

35 (5) repeatedly failing to use a resident's chosen name or  
36 pronouns after being clearly informed of the chosen name or  
37 pronouns;

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

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

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

1 (9) refuse or willfully fail to provide any service, care, or  
2 reasonable accommodation to a resident or an applicant for services  
3 or care.

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

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

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

23  
24 3. Each long-term care facility shall ensure that resident  
25 records, including records generated at the time of admission,  
26 include the resident’s gender identity and the resident’s chosen  
27 name and pronouns, as indicated by the resident.

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

35 The facility shall take appropriate steps to minimize the  
36 likelihood of inadvertent or accidental disclosure of such  
37 information to other residents, visitors, or facility staff, except to  
38 the minimum extent necessary for facility staff to perform their  
39 duties.

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

1 to, transgender, undesignated/non-binary, intersex, or gender-  
2 nonconforming residents, whenever they are partially or fully  
3 unclothed.

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

7 d. Transgender residents shall be provided access to such  
8 transition-related assessments, therapy, and treatments as have been  
9 recommended by the resident's health care provider, including, but  
10 not limited to, transgender-related medical care, including hormone  
11 therapy and supportive counseling.

12

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

20

21 6. a. Each long-term care facility shall ensure that the  
22 administrators and staff at the long-term care facility receive  
23 training, on at least a biennial basis, concerning:

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

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

- 29 (1) the definition of the terms commonly associated with sexual  
30 orientation, gender identity and expression, intersex status, and  
31 HIV;

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

- 35 (3) a description of the health and social challenges historically  
36 experienced by LGBTQI seniors and seniors living with HIV,  
37 including discrimination when seeking or receiving care at long-  
38 term care facilities, and the demonstrated physical and mental  
39 health effects within the LGBTQI community associated with such  
40 discrimination;

- 41 (4) strategies to create a safe and affirming environment for  
42 LGBTQI seniors and seniors living with HIV, including suggested  
43 changes to facility policies and procedures, forms, signage,  
44 communication between residents and their families, activities, and  
45 staff training and in-services; and

- 46 (5) an overview of the provisions of this act.

47 c. The training required pursuant to this section shall be  
48 provided by an entity that has demonstrated expertise in identifying

1 the legal, social, and medical challenges faced by, and in creating  
2 safe and affirming environments for, LGBTQI seniors and seniors  
3 living with HIV who reside in long-term care facilities in New  
4 Jersey.

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

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

29 (3) Each long-term care facility shall retain records  
30 documenting the completion of the training required pursuant to this  
31 section by each administrator and staff member at the long-term  
32 care facility. Compliance records shall be made available, upon  
33 request, to the Department of Health, the Department of Human  
34 Services, and the Office of the State Long-Term Care Ombudsman.

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

37

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

43

44 8. This act shall take effect 180 days after the date of  
45 enactment.

## STATEMENT

1  
2  
3 This bill establishes certain requirements concerning the rights of  
4 residents of long-term care facilities who are lesbian, gay, bisexual,  
5 transgender, undesignated/non-binary, questioning, queer, or  
6 intersex (LGBTQI).

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

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

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

16 (3) where rooms are assigned by gender, assigning, reassigning,  
17 or refusing to assign a room to a transgender or undesignated/non-  
18 binary resident other than in accordance with the transgender or  
19 undesignated/non-binary resident's gender identity, unless at the  
20 transgender or undesignated/non-binary resident's request;

21 (4) prohibiting a resident from using, or harassing a resident  
22 who seeks to use or does use, a restroom available to other residents  
23 of the same gender identity, regardless of whether the resident is  
24 making a gender transition, has taken or is taking hormones, has  
25 undergone gender confirmation surgery, or presents as gender-  
26 nonconforming;

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

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

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

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

39 (9) refusing or willfully failing to provide any service, care, or  
40 reasonable accommodation to a resident or an applicant for services  
41 or care.

42 All facilities will be required to prominently post notice stating  
43 that the facility does not discriminate and does not permit  
44 discrimination, including, but not limited to, bullying, abuse, or  
45 harassment, on the basis of actual or perceived sexual orientation,  
46 gender identity, gender expression, intersex status, or HIV status, or  
47 based on association with another individual on account of that  
48 individual's actual or perceived sexual orientation, gender identity,



1 gender expression, or HIV status. The notice will include the  
2 contact information for the Office of the State Long-Term Care  
3 Ombudsman.

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

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

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

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

33 The requirements of the bill will not apply to the extent that  
34 compliance with the requirement is incompatible with any  
35 professionally-reasonable clinical judgment.

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

46 Each facility will be required to designate two employees, with  
47 one representing management and one representing direct care staff,  
48 who will receive in-person training within six months after the

1 effective date of the bill, which employees will serve as points of  
2 contact at the facility concerning compliance with the provisions of  
3 the bill and will be responsible for developing a general training  
4 plan for the facility. All other employees of the facility will be  
5 required to complete the training within one year after the effective  
6 date of the bill, and new employees will be required to complete the  
7 training within one year of the employee's date of hire. Facilities  
8 are to document completion of the training by each administrator  
9 and staff member. Each facility will be responsible for the cost of  
10 providing the training to its employees.

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

18

19

20

21

22 Establishes certain requirements concerning rights of lesbian,  
23 gay, bisexual, transgender, undesignated/non-binary, questioning,  
24 queer, intersex, and HIV-positive residents of long-term care  
25 facilities.

# SENATE, No. 2545

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 8, 2020

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator VIN GOPAL**

**District 11 (Monmouth)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman NICHOLAS CHIARAVALLOTI**

**District 31 (Hudson)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Co-Sponsored by:**

**Senator Ruiz, Assemblyman Verrelli, Assemblywoman McKnight, Assemblymen Armato, Johnson, Assemblywomen Jasey, Swain, Assemblyman Tully, Assemblywomen Jimenez, Lampitt, Timberlake, Assemblyman McKeon and Assemblywoman Downey**

**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.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2545

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 14, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 2545.

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.

# ASSEMBLY, No. 4288

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 22, 2020

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman NICHOLAS CHIARAVALLOTTI**

**District 31 (Hudson)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Co-Sponsored by:**

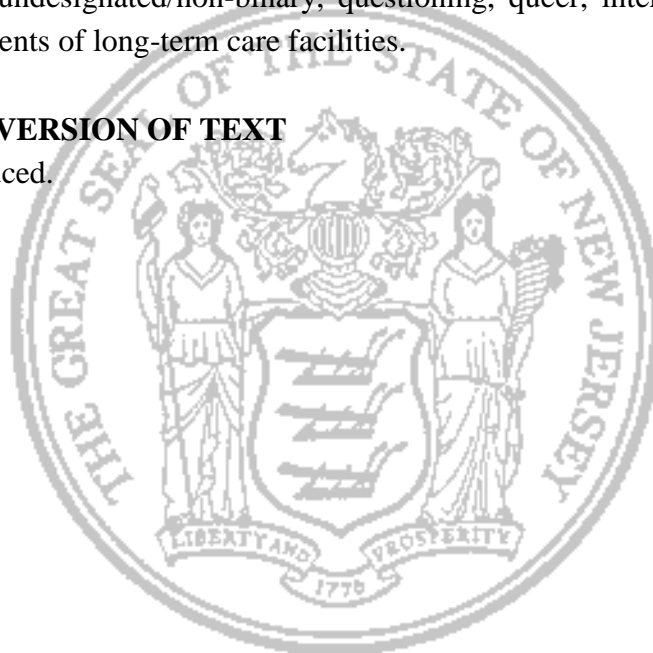
**Assemblyman Verrelli, Assemblywoman McKnight, Assemblymen Armato, Johnson, Assemblywomen Jasey, Swain, Assemblyman Tully, Assemblywomen Jimenez, Lampitt, Timberlake, Assemblyman McKeon and Assemblywoman Downey**

**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.

# 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.

# Governor Murphy Signs "LGBTQI+ Senior Bill of Rights" Legislation

03/3/2021

**TRENTON** – Today, Governor Phil Murphy signed legislation (S2545) to establish specific rights and protections for lesbian, gay, bisexual, transgender, undesignated/non-binary, questioning, queer, and intersex (LGBTQI+) older adults and people living with HIV in long-term care facilities.

"Building a stronger and fairer New Jersey starts with ensuring that every individual is given the right to live their truth openly and freely," **said Governor Murphy**. "Today's bill signing underscores this commitment to our LGBTQI+ older adults and people living with HIV in long-term care facilities by providing critical protections from discrimination. No one should ever feel ashamed for who they are, and everyone should be able to live with the dignity and equality that they deserve."

"This new civil rights law ensures that LGBTQI+ residents in long-term care facilities have equitable access to health care and provides the same legal protections as everyone else regardless of their sexual orientation or health status," **said Health Commissioner Judith Persichilli**.

"A long-term care facility is a health care setting, but it's also someone's home," **said Human Services Acting Commissioner Sarah Adelman**. "Every person deserves to feel safe, respected, and comfortable where they receive their medical care, and especially in the place they call home. This law is an important step in New Jersey's continued protection and support of LGBTQI+ individuals throughout their lifespans, including persons with medical conditions and disabilities."

"This law will provide much needed protections for LGBTQI+ and people living with HIV in long-term care," **said New Jersey Long-Term Care Ombudsman Laurie Facciarossa Brewer**. "Too often we see LGBTQI+ people going back in the closet when they go into long term care, out of legitimate fear of discrimination, loss of dignity, and freedom. These protections will ensure that our LGBTQI elders can live free from discrimination in these settings."

Today's bill signing outlines the "LGBTQI+ Senior Bill of Rights", which prohibits long-term care facilities from taking any of the following actions based on a person's sexual orientation, gender identity, gender expression, intersex status, or HIV status:

1. Denying admission to, transferring, discharging, or evicting a resident;
2. Opposing a request by residents to share a room;
3. Assigning or reassigning a room based on gender;
4. Forbidding a resident from using a restroom based on gender;
5. Repeatedly failing to use a resident's chosen name or pronouns despite being informed;
6. Denying a resident from wearing clothing, accessories, or cosmetics of their choice;
7. Restricting a resident's right to engage with other residents or with visitors;
8. Denying, restricting, or providing unequal medical or non-medical care; and
9. Declining to provide any service, care, or reasonable accommodation.

"Many older adults in the LGBTQI+ community have experienced decades of stigma and discrimination. They should not, under any circumstances, feel marginalized in the long-term care center where they deserve to feel at home," **said Assemblywoman Valerie Vainieri Huttle**. "We've worked tirelessly in New Jersey to protect the rights of LGBTQI+ people, but there's more we can do to combat discrimination in long-term care facilities and ensure all LGBTQI+ residents may grow older with dignity."

"Long-term care facilities are supposed to be a haven for the most vulnerable among us. No one should

worry that they will experience differential treatment, abuse or neglect because of their gender identity or sexual orientation if they enter long-term care," **said Assemblyman Nicholas Chiaravalloti**. "This new law is about removing barriers to quality care for all LGBTQI+ residents in our long-term care system."

"When someone is considering long-term care, the last thing we want is for them to be fearful they will face harassment because they identify as LGBTQI+. This fear may even deter some from going into long-term care in the first place," **said Assemblywoman Annette Quijano**. "Our goal is to ensure all LGBTQI+ residents feel safe and respected in long-term care facilities, and all receive the highest standard of care."

"Many older LGBTQI+ adults living in long-term care facilities have been the victims of harassment and neglect by the staff just because of who they are, how they identify, and whether or not they live with HIV," **said Senator Troy Singleton**. "This callous treatment is despicable and unacceptable. These facilities, their staff, and their residents must understand the rights which protect all members of our society, including the LGBTQI community, without exception. With the signing of this bill, more people will be properly trained and educated about the rights and protections afforded to this community."

"As someone who represents a large LGBTQI+ community, I was shocked and horrified to learn of the level of neglect and discrimination some seniors face in our long-term care facilities," **said Senator Vin Gopal**. "We must do better, and make sure all LGBTQI+ residents know their rights so they and their families can hold staff accountable and be afforded the same level of care and treatment as other residents."

"While the LGBTQI+ community has enjoyed much more support in recent years, they have unfortunately continued to face discrimination in long-term care facilities," **said Senator Richard Codey**. "This signing will help ensure our LGBTQI+ seniors, especially those living with HIV, receive the high-quality care they deserve, shielding them from the shamefully discriminatory treatment they have been subjected to by administrators and staff."

"We are thrilled that Governor Murphy is signing the LGBTQ Senior Bill of Rights, which will bring much-needed protections to LGBTQ older adults and seniors living with HIV/AIDS," **said Christian Fuscarino, Executive Director, Garden State Equality**. "Through our work, we know LGBTQ older adults are at greater risk for social isolation, health issues, and poverty, and often have concerns about living in a long-term care facility. For many, they spent their entire lives fighting for the rights we now enjoy today—they deserve so much better. With this bill signed into law, providers at these facilities will be better equipped to care for these vulnerable populations."

"This legislation will immortalize much needed protections for our most vulnerable LGBTQI+ residents and those living with HIV," **said Trenton Mayor W. Reed Gusciora**. "Dignity and respect are just as essential as any other medical service provided at these facilities. We're thankful that a framework is now in place to help ensure our seniors are granted all the appropriate accommodations regardless of their sexual orientation and gender identity so that they can live free of discrimination during their twilight years."