

SENATE No. 2604

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, February 29, 2024.

The committee on Elder Affairs, to whom was referred the petitions (accompanied by bill, Senate, No. 381) of Patricia D. Jehlen, Rebecca L. Rausch, Jack Patrick Lewis, Susannah M. Whipps and other members of the General Court for legislation to establish an LGBTQI long-term care facility bill of rights; and (accompanied by bill, House, No. 637) of Jack Patrick Lewis, Sarah K. Peake and others relative to the right, report the accompanying bill (Senate, No. 2604).

For the committee,
Patricia D. Jehlen

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An Act establishing an LGBTQI long-term care facility bill of rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 111 of the General Laws is hereby amended by inserting after section 72BB the
2 following section:-

3 Section 72CC. (a) As used in this section the following words shall, unless the context
4 requires otherwise, have the following meanings:

5 "Intersex", a person whose sexual or reproductive anatomy or chromosomal pattern is not
6 consistent with typical definitions of male or female.

7 "LGBTQI", lesbian, gay, bisexual, transgender, queer, questioning, and intersex.

8 "Long-term care facility", any institution, whether conducted for charity or profit, that is
9 advertised, announced, or maintained for the express or implied purpose of providing 4 or more
10 individuals admitted thereto with long-term resident, nursing, convalescent, or rehabilitative
11 care; supervision and care incident to old age for ambulatory persons; or retirement home care

12 for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest
13 homes, infirmaries maintained in towns and charitable homes for the aged.

14 "Long-term care facility staff", all individuals employed by, or contracted directly with, a
15 long-term care facility.

16 (b) Except as provided in subsection (c), any long-term care facility and long-term care
17 facility staff are prohibited from taking any of the following actions based in whole or in part on
18 a person's actual or perceived sexual orientation, gender identity, gender expression, intersex
19 status, or HIV status:

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

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

24 (3) where rooms are assigned by gender, assigning, reassigning, or refusing to assign a
25 room to a transgender resident other than in accordance with the transgender resident's gender
26 identity, unless at the transgender or resident's request, and assigning, reassigning or refusing to
27 assign a room to a non-binary resident other than in accordance with the non-binary resident's
28 preference.

29 (4) prohibiting a resident from using or harassing a resident who seeks to use or does use,
30 a restroom available to other persons of the same gender identity, regardless of whether the
31 resident is making a gender transition, has taken or is taking hormones, has undergone gender
32 affirmation surgery or presents as gender-nonconforming. For the purposes of this paragraph,

33 harassment includes, but is not limited to, requiring a resident to show identity documents in
34 order to gain entrance to a restroom available to other persons of the same gender identity;

35 (5) repeatedly and intentionally failing to use a resident's chosen name or pronouns after
36 being informed of the chosen name or pronouns, in a manner that constitutes discrimination,
37 harassment or bullying;

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

40 (7) restricting a resident's right to associate with other residents or with visitors, including
41 the right to consensual sexual relations where sexual relations would not be restricted if the
42 participants were heterosexual or married;

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

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

48 (c) The requirements of this section shall not apply to the extent that compliance with the
49 requirement is incompatible with any professionally reasonable clinical judgment.

50 (d) Each facility shall distribute a document containing the following notice alongside the
51 informational document required by section 72AA:

52 "[Name of facility] does not discriminate and does not permit discrimination, including,
53 but not limited to, bullying, abuse or harassment, on the basis of actual or perceived sexual

54 orientation, gender identity, gender expression, intersex status or HIV status or based on
55 association with another individual on account of that individual's actual or perceived sexual
56 orientation, gender identity, gender expression, intersex status or HIV status. This includes
57 residents and staff as well as family members and other visitors to the facility. You may file a
58 complaint with the office of the long-term care ombudsman, [provide current contact
59 information] if you believe you have experienced this kind of discrimination."

60 (e) Each long-term care facility shall ensure that resident records, including records
61 generated at the time of admission, include the resident's gender and the name and pronouns by
62 which the resident would like to be identified, as indicated by the resident.

63 (f) Unless required by state or federal law, no long-term care facility shall disclose any
64 personal identifying information regarding: (1) a resident's sexual orientation; (2) whether a
65 resident is transgender or non-binary; (3) a resident's gender transition status; (4) a resident's
66 intersex status; or (5) a resident's HIV status. Long-term care facilities shall take appropriate
67 steps to minimize the likelihood of inadvertent or accidental disclosure of such information to
68 other residents, visitors, or long-term care facility staff, except when necessary for long-term
69 care facility staff to perform their duties.

70 (g) Unless expressly authorized by the resident or the resident's authorized representative,
71 long-term facility staff not directly involved in providing direct care to a resident, including but
72 not limited to, transgender, intersex, or gender nonconforming resident, shall not be present
73 during physical examination of, or the provision of personal care to, that resident if the resident
74 is partially or fully unclothed. A facility shall use doors, curtains, screens, or other effective
75 visual barriers to provide bodily privacy for all residents, including, but not limited to,

76 transgender, non-binary, intersex, or gender-nonconforming residents, whenever they are
77 partially or fully unclothed.

78 (h) Informed consent shall be required in relation to any non-therapeutic examination,
79 observation, or treatment of a resident of the facility.

80 (i) Transgender residents shall be provided access to such transition-related assessments,
81 therapy and treatments as have been recommended by the resident's health care provider,
82 including, but not limited to, transgender-related medical care, including hormone therapy and
83 supportive counseling.

84 (j) LGBTQI-related programming, such as an LGBTQI Pride Month event or a
85 Transgender Day of Remembrance event, shall be allowed and treated equally to other holidays
86 and cultural celebrations or commemorations.

87 (k) The department shall adopt regulations relative to long-term care facilities that
88 violate the requirements of this section, or that employ a staff member who violates the
89 requirements of this section. The regulations shall include, but not be limited to, civil penalties or
90 other administrative action for any long-term care facility found to be in violation of this section.
91 Nothing in this act shall be construed to limit the ability to bring any civil, criminal, or
92 administrative action for conduct constituting a violation of any other provision of law.

93 (l) (1) Each long-term care facility shall ensure that the long-term care facility staff
94 receive training, concerning:

95 (i) the care of LGBTQI older adults and older adults living with HIV; and

96 (ii) the prevention of discrimination based on sexual orientation, gender identity or
97 expression, intersex status, and HIV status.

98 (2) The training required by this section shall be provided by EOEA or MDPH, or
99 another entity that has demonstrated expertise in creating safe and affirming environments and
100 identifying the legal, social, and medical challenges faced by LGBTQI older adults and older
101 adults living with HIV, and others who are LGBTQI and/or living with HIV, who reside in long-
102 term care facilities.

103 (3) Each long-term care facility shall retain records documenting the completion of the
104 training required pursuant to this section by each administrator and staff member at the long-term
105 care facility. Compliance records shall be made available, upon request, to the department, the
106 executive office of health and human services and the office of the long-term care ombudsman.

107 (4) Each long-term care facility shall assume the cost of providing the training required
108 pursuant to this section.

109 (m) The commissioner and the secretary of the executive office of health and human
110 services shall adopt rules and regulations as may be necessary to implement the provisions of
111 this section.

112 SECTION 2. All long-term care facility staff employed by a long-term care facility on
113 the effective date of this act, other than an employee designated pursuant to subsection (a), shall
114 complete the training required by section 1 within 1 year of the effective date of this act. Long-
115 term care facility staff hired after the effective date shall complete all training required by this
116 section within 1 year of their date of hire unless the new hire provides the long-term care facility

117 with documentation demonstrating that they have completed equivalent training within the past 2
118 years. All long-term care facility staff are required to take this training every two years.

119 SECTION 3. This act shall take effect 180 days after the date of enactment.