HOUSE DOCKET, NO. 3515 FILED ON: 1/20/2023

HOUSE . . . . . No. 637

The Commonwealth of Massachusetts

PRESENTED BY:

Jack Patrick Lewis and Sarah K. Peake

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jack Patrick Lewis	*7th Middlesex*	*1/20/2023*
Sarah K. Peake	*4th Barnstable*	*1/20/2023*
Patricia D. Jehlen	*Second Middlesex*	*1/20/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*1/22/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/9/2023*
Natalie M. Higgins	*4th Worcester*	*3/7/2023*
James B. Eldridge	*Middlesex and Worcester*	*3/13/2023*

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HOUSE . . . . . No. 637

By Representatives Lewis of Framingham and Peake of Provincetown, a petition (accompanied by bill, House, No. 637) of Jack Patrick Lewis, Sarah K. Peake and others relative to the rights of persons who identify as LGBTQI in long-term care facilities. Elder Affairs.

The Commonwealth of Massachusetts

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

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:

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

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

"Gender expression", a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's birth sex.

"Gender identity" or “Gender”, a person’s gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or birth sex. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a

person’s core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.

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

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

“HIV”, human immunodeficiency virus.

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

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

"Long-term care facility", any institution, whether conducted for charity or profit, that is advertised, announced, or maintained for the express or implied purpose of providing 4 or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons; or retirement home care for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest homes, infirmaries maintained in towns and charitable homes for the aged.

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

"Non-binary" describes a person whose gender identity falls outside of the traditional gender binary structure of man and woman.

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

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

"Questioning", a person who is exploring or unsure about their own sexual orientation or gender identity or expression.

"Sexual orientation", a person's romantic or sexual attraction to other people.

"Transgender", a person whose gender identity or gender expression differs from the birth sex of that person.

(b) Except as provided in subsection

(c), any long-term care facility and long-term care facility staff are prohibited from taking 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 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 resident other than in accordance with the transgender resident's gender

identity, unless at the transgender or resident's request, and assigning, reassigning or refusing to assign a room to a non-binary resident other than in accordance with the non-binary resident's preference.

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

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

(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 where sexual relations would not be restricted if the participants were heterosexual or married;

(8) denying or restricting medical or nonmedical care that is appropriate to a resident's organs and bodily needs or providing medical or nonmedical 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.

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

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

"[Name of 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, intersex status or HIV status. This includes residents and staff as well as family members and other visitors to the facility. You may file a complaint with the office of the long-term care ombudsman, [provide current contact information] if you believe you have experienced this kind of discrimination."

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

(f) Unless required by state or federal law, no long-term care facility shall disclose any personal identifying information regarding: (1) a resident's sexual orientation; (2) whether a resident is transgender or non-binary; (3) a resident's gender transition status; (4) a resident's intersex status; or (5) a resident's HIV status. Long-term care facilities shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of such information to

other residents, visitors, or long-term care facility staff, except when necessary for long-term care facility staff to perform their duties.

(g) Unless expressly authorized by the resident or the resident's authorized representative, long-term facility staff not directly involved in providing direct care to a resident. A facility shall use doors, curtains, screens, or other effective visual barriers to provide bodily privacy for all residents, including, but not limited to, transgender, non-binary, intersex or gender-nonconforming residents, whenever they are partially or fully unclothed.

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

(i) Transgender residents shall 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, including hormone therapy and supportive counseling.

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

(k) The department shall adopt regulations relative to long-term care facilities that violate the requirements of this section, or that employ a staff member who violates the requirements of this section. The regulations shall include, but not be limited to, civil penalties or other administrative action for any long-term care facility found to be in violation of this section. Nothing in this act shall 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.

(l) (1) Each long-term care facility shall ensure that the long-term care facility staff receive training, on at least a biennial basis, concerning:

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

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

(2)The training required by this section shall include, but not be limited to:

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

(ii) best practices for communicating with or about LGBTQI older adults and older adults living with HIV, and others who are LGBTQI and/or living with HIV, including the use of the name and pronouns by which a resident has expressed the desire to be identified;

(iii) a description of the health and social challenges historically experienced by LGBTQI older adults and older adults living with HIV, and others who are LGBTQI and/or living with HIV, including discrimination when seeking or receiving care at long-term care facilities, and the demonstrated physical and mental health effects within the LGBTQI community associated with such discrimination;

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

(v) an overview of the provisions of this section.

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

(4) Long-term care facility staff shall complete all training required by this section within 1 year of their date of hire unless the new hire provides the long-term care facility with documentation demonstrating that they have completed equivalent training within the past 2 years.

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

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

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

SECTION 2. (a) Each long-term care facility shall designate 2 employees, including 1 employee representing management at the facility and 1 employee representing direct care staff at the facility, to receive in-person training required by section 1 within 6 months of the effective date of this act. The designated employees shall serve as points of contact for the long-term care facility regarding compliance with the provisions of this act and shall develop a general training

plan for the facility. In the event a designated employee ceases to be employed by the facility, the facility shall designate another employee who is representative of the employee group represented by the former designee, who shall complete the in-person training required pursuant to this section, serve as a point of contact for the facility regarding compliance with the provisions of this act, and have joint responsibility for the facility's training plan.

(b) All long-term care facility staff employed by a long-term care facility on the effective date of this act, other than an employee designated pursuant to subsection (a), shall complete the training required by section 1 within 1 year of the effective date of this act.

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