



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

March 18, 2024

DAL: DAL NH # 24-09
DAL ACF # 24-19
Subject: Long-Term Care Facility Residents'
Bill of Rights Amendment

Dear Nursing Home and Adult Care Facility Administrators:

Public Health Law section 2803-c-2, effective May 28, 2024, establishes that it is unlawful for a nursing home or adult care facility to take or fail to take certain actions, wholly or partially, based on a resident's actual or perceived sexual orientation, gender identity or expression, or human immunodeficiency virus (HIV) status, including:

- denying admission to the facility, transferring, or refusing to transfer a resident within a facility or to another facility, or discharging or evicting a resident from a facility [§ 2803-c-2(2)(a)(i)];
- denying a request by residents to share a room [§ 2803-c-2(2)(a)(ii)];
- where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a resident other than in accordance with the resident's gender identity, unless at the resident's request [§ 2803-c-2(2)(a)(iii)];
- prohibiting a resident from using a restroom available to other persons of the same gender identity or harassing a resident who seeks to use or does use such a restroom [§ 2803-c-2(2)(a)(iv)];
- willfully and repeatedly failing to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns [§ 2803-c-2(2)(a)(v)];
- denying a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for other residents [§ 2803-c-2(2)(a)(vi)];
- restricting a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner [§ 2803-c-2(2)(a)(vii)]; and
- denying or restricting a resident from accessing appropriate medical or nonmedical care [§ 2803-c-2(2)(a)(viii)].

Please note, the provisions do not apply where they are incompatible with any professionally reasonable clinical judgment. [§ 2803-c-2(2)(b)].

Additionally, facilities must:

- post notices about their non-discrimination policies with the specific verbiage included in the enclosed about reporting violations to the Office of the New York State Long-Term Care Ombudsman Program [§ 2803-c-2(3)];

- employ procedures for recordkeeping purposes that include residents' gender identity, preferred name as indicated by the resident, and preferred pronoun as indicated by the resident [§ 2803-c-2(4)(a)];
- protect personally identifiable information regarding residents' sexual orientation, whether a resident is transgender, a resident's transition history, and HIV status from unauthorized disclosure in accordance with applicable federal and state laws, and to take reasonably necessary steps to prevent the inadvertent or incidental disclosure of that information to other residents, visitors, or facility staff [§ 2803-c-2(5)];
- ensure that facility staff who are not involved in providing direct care to residents shall not be present during physical examinations or the provision of personal care without the express permission of the resident or the resident's legally authorized representative [§ 2803-c-2(6)]; and
- ensure that at least once every two (2) years, each facility staff member who works directly with residents receives training on cultural competency focusing on residents who identify as lesbian, gay, bisexual or transgender and/or residents living with human immunodeficiency virus [§ 2803-c-2(7)(a)].

To support compliance with this law, the Department of Health (“Department”) provides the enclosed verbiage from § 2803-c-2(3) to be posted alongside the facility’s current non-discrimination policy in all places and on all materials where such policy is posted. Additionally, the Department strongly encourages that nursing homes and adult care facilities review their existing policies and procedures and update as appropriate to ensure compliance with these requirements.

Questions regarding this guidance may be referred to nhinfo@health.ny.gov or acfinfo@health.ny.gov.

Sincerely,

KellyAnn Anderson, Director
Division of Adult Care Facility
and Assisted Living Surveillance

Stephanie E. Paton, RN, Director
Division of Nursing Home and ICF/IID Surveillance

Enclosure

cc: A. Herbst
V. Deetz
H. Hayes
A. Cokgoren
K. Walker

Template Required Verbiage to be posted with Non-Discrimination Policy

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

"(NAME OF FACILITY) DOES NOT DISCRIMINATE AND DOES NOT PERMIT DISCRIMINATION, INCLUDING, BUT NOT LIMITED TO, BULLYING, ABUSE, HARASSMENT, OR DIFFERENTIAL TREATMENT ON THE BASIS OF ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV STATUS, OR BASED ON ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR HIV STATUS. YOU MAY FILE A COMPLAINT WITH THE OFFICE OF THE NEW YORK STATE LONG-TERM CARE OMBUDSMAN PROGRAM (PROVIDE CONTACT INFORMATION) IF YOU BELIEVE THAT YOU HAVE EXPERIENCED THIS KIND OF DISCRIMINATION."