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To: Administrators of Long-Term Care Facilities Licensed Pursuant to N.J.A.C. 8:39

From: Michael J. Kennedy, J.D. *MJK*
Executive Director, Division of Certificate of Need and Licensing

Date: April 19, 2022

Re: Statutory Amendments Regarding the Rights of LGBTQI+ and HIV+ Residents of Long-Term Care Facilities Pursuant to N.J.S.A. 26:2H-12.101-107.

This memorandum is to advise you of a statute concerning the rights of LGBTQI+ and HIV+ residents of long-term care facilities; N.J.S.A. 26:2H-12.101-107 ("LGBTQI+ Law"), and your facility's responsibilities under the LGBTQI+ Law. The LGBTQI+ Law was signed on March 3, 2021 and took effect on August 30, 2021. The requirements of the LGBTQI+ Law will be included in N.J.A.C. 8:39 in future rulemaking.

Specifically, the LGBTQI+ Law establishes specific rights and protections for lesbian, gay, bisexual, transgender, undesignated/non-binary, questioning, queer, and intersex ("LGBTQI+") older adults and people living with HIV ("HIV+") in long-term care facilities ("Facilities").

The LGBTQI+ Law ensures that LGBTQI+ and HIV+ residents in facilities have equitable access to health care and provides the same legal protections as everyone else regardless of their sexual orientation or health status.

Prohibited Actions

The LGBTQI+ Law prohibits 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 a 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 or reassigning a room based on gender, subject to the provisions of 42 C.F.R. 483.10(e)(5);

4. Forbidding a resident from, 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 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 failing to use a resident's chosen pronouns or the name the resident chooses to be called, despite being clearly informed of the resident's choice;
6. Denying a resident from wearing preferred clothing, accessories, or cosmetics, or participating in grooming practices;
7. Restricting a resident's right to visit and have conversations with other residents or with visitors including the right to have consensual sexual relations;
8. Denying, restricting, or providing unequal medical or non-medical care, which is appropriate to the resident's bodily needs and organs, or providing medical or nonmedical care that, to a similarly-situated resident, causes avoidable discomfort or unfairly demeans the resident's dignity; and
9. Declining to provide any service, care, or reasonable accommodation requested by the resident, subject to the provisions of 42 C.F.R. 483.10(c)(6).

Resident Records

Additionally, facilities are required to ensure that resident records include the resident's gender identity and the resident's chosen name and pronouns, as indicated by the resident.

Confidentiality

The LGBTQI+ Law also requires facilities to maintain the confidentiality of certain resident information. Unless required by state or federal law, personal identifying information regarding a resident's sexual orientation, whether a resident is transgender or undesignated/non-binary, a resident's gender transition status, a resident's intersex status, or a resident's HIV status shall not be disclosed.

Further, facilities are 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.

Unless expressly authorized, facility staff not directly involved in providing direct care to a transgender, undesignated/non-binary, intersex, or gender-nonconforming resident, shall not be present during a physical examination of, or the provision of personal care to, that resident if the resident is partially or fully unclothed. Doors, curtains, screens, or other effective visual barriers to providing bodily privacy, when partially or fully unclothed, shall be used. Informed consent is required in relation to any non-therapeutic examination or observation of, or treatment provided to, a resident of the facility.

Facilities shall also provide transgender residents with access to transition-related assessments, therapy, and treatments as having been recommended by the resident's health care provider, including, but not limited to, transgender-related medical care, including hormone therapy and supportive counseling.

Violations

A facility or an employee of a facility that violates the requirements of the LGBTQI+ Law is subject to civil or administrative action.

Training

Facilities shall designate two employees, including one employee representing management at the facility and one employee representing direct care staff at the facility, to receive in-person training within six months after the effective date of the LGBTQI+ Law. The required training shall 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+ and HIV+ seniors who reside in long-term care facilities in New Jersey.

The required training shall address:

1. Caring for LGBTQI+ seniors and seniors living with HIV;
2. Preventing discrimination based on sexual orientation, gender identity or expression of intersex status, and HIV status;
3. The definition of terms commonly associated with sexual orientation, gender identity and expression, intersex status, and HIV;
4. Best practices for communicating with or about LGBTQI+ and HIV+ seniors, including the use of a resident's chosen name and pronouns;
5. A description of the health and social challenges historically experienced by LGBTQI+ and HIV+ seniors, including discrimination when seeking or receiving care at long-term care facilities, and the demonstrated physical and mental health effects within the LGBTQ community;
6. Strategies to create a safe and affirming environment for LGBTQI+ and HIV+ seniors, including suggested changes to facility policies and procedures, forms, signage, communication between

- residents and their families, activities, and staff training and in-services; and
7. An overview of the provisions of LGBTQI+ Law.

The designated employees shall develop a general training plan, which addresses the seven points above, for the facility and shall also serve as points of contact for the facility regarding compliance with the provisions of the LGBTQI+ Law. Facilities shall ensure that administrators and staff receive training, on at least every other year basis.

Other than the designated employees identified above, the administrators and staff members employed at a facility as of August 30, 2021, shall complete the general training plan for the facility developed by the designated employees, on or before August 29, 2022. Individuals hired after August 30, 2021, are required to complete the training within one year after the date of hire.

Facilities are responsible for maintaining records documenting the completion of the training, as well as the cost of providing the training.

Questions regarding this memo may be directed to Michael Kennedy, Executive Director, Division of Certificate of Need and Licensing at Michael.Kennedy@doh.nj.gov or (609) 376-7760.