

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Act on Aging to require that the Mayor, Deputy Mayor for Health and Human Services, District of Columbia Office on Aging, and Commission on Aging to interpret groups of greatest social need to include LGBTQ elders for the purpose of allocating funds provided to the District under the federal Older Americans Act, and to amend the Human Rights Act of 1977 to establish an LGBTQ long-term care bill of rights to establish explicit rights and legal protections for LGBTQ elders in long-term care.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Care for LGBTQ Elders Amendment Act of 2018”.

Sec. 2. Definitions.

(1) “Elder” means a person 60 years of age or older.

(2) “Harassment” shall include requiring a resident to show identity documents or

otherwise provide evidence of their sex or gender identity to gain entrance to a restroom

available to other individuals of the same gender identity;

(2) “Gender identity or expression” shall have the same meaning as provided in

section 102(12A) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-238; D.C. Official Code § 2-1401.02(12A)).

(x) “Home care agency” means an agency that provides rehabilitative, restorative,

or other skilled nursing care to residents in the resident’s home.

(3) “LGBTQ” means individuals who identify as or are perceived as lesbian, gay,

bisexual, transgender, queer, or as questioning or exploring their sexuality or sexual identity.

37 (4) “Long-term care facility” shall have the same meaning as provided in section
38 101(7) of the D.C. Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989
39 (D.C. Law 7-218; D.C. Official Code § 7-701.01(7)).
40 (5) “Older Americans Act” means the Older Americans Act of 1965, approved
41 July 14, 1965 (79 Stat. 218; 42 U.S.C. § 3001 *et seq.*).
42 (6) “Representative of a resident” shall have the same meaning as provided in
43 section 101(14) of the D.C. Long-Term Care Ombudsman Program Act of 1988, effective March
44 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(14)).
45 (7) “Resident” shall have the same meaning as provided in section 101(13) of the
46 D.C. Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law
47 7-218; D.C. Official Code § 7-701.01(13)).
48 (8) “Sexual orientation” shall have the same meaning as provided in section
49 102(28) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C.
50 Official Code § 2-1401.02(28)).
51 Sec. 3. Greatest social need.
52 Title III of the District of Columbia Act on Aging, effective March 3, 1979 (D.C. Law 1-
53 24, D.C. Official Code § 7-503.01 *et seq.*) is amended by adding a new section 307 to read as
54 follows:
55 “§ 7-503.07. Greatest social need.
56 “(a) For the purposes of administering the Older Americans Act, the term greatest social
57 need shall be interpreted to include LGBTQ elders.
58 “(b) Within 210 days after the effective date of this act, the Mayor, pursuant to Title I of
59 the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat.
60 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this
61 section.”
62 Sec. 4. LGBTQ Elder Long-Term Care Bill of Rights.
63 Subchapter II of the Human Rights Act of 1977, effective December 13, 1977, D.C. Law
64 2-38, D.C. Official Code § 2-1402 *et seq.*) is amended by added a new Part J. to read as follows:
65 “Part J. Long-Term Care Facilities.

66 “§ 2-1402.91. Prohibitions.

67 “(a) It shall be unlawful for a long-term care facility, or an employee or contractor at such
68a facility (“staff”), to do any of the following acts wholly or partially for a discriminatory reason
69based on an individual’s actual or perceived sexual orientation, gender identity or expression, or
70human immunodeficiency virus (“HIV”) status:

71 “(1) Deny an individual admission to a long-term care facility;

72 “(2) Refuse to transfer a resident, or transfer a resident to another long-term care
73facility;

74 “(3) Discharge or evict a resident from a long-term care facility;

75 “(4) Deny a request by residents to share a room;

76 “(5) Where rooms are assigned by gender, assign or reassign a transgender
77resident to a room that is not accordance with the resident’s gender identity or refuse to assign a
78transgender resident to a room in accordance with the resident’s gender identity, unless at the
79resident’s request;

80 “(6) Prohibit a resident from using, or harass a resident who seeks to use or does
81use, a restroom available to other residents of the same gender identity, regardless of whether the
82resident has or undergone gender transition or appears to be gender-nonconforming.

83 “(7) Willfully fail to use a resident’s preferred name or pronouns after being
84clearly informed of the resident’s preferred name or pronouns;

85 “(8) Deny a resident the right to wear or be dressed in clothing, accessories, or
86cosmetics that are permitted for other residents;

87 “(9) Restrict a resident’s right to associate with other residents or with visitors,
88including the right to consensual sexual relations, unless the restriction is uniformly applied to all
89residents in a nondiscriminatory manner; and

90 “(10) Deny or restrict a resident from accessing appropriate medical or
91nonmedical care, or provide medical or nonmedical care, that unreasonably demeans the
92resident’s dignity or causes avoidable discomfort.

93 “(b)(1) Staff not involved in providing direct care to a resident shall not be present during
94physical examination or for the provision of personal care to that resident if the resident is
95partially or fully unclothed without the express permission of that resident or the representative
96of the resident.

97 “(2) A long-term care facility shall use doors, curtains, screens, or other effective
98visual barriers to provide privacy for all residents whenever they are partially or fully unclothed.

99 “(3) Each resident or the representative of the resident shall be informed of and
100have the right to refuse examination, observation, or treatment by any staff when the primary
101purpose is educational or informational rather than medical. A refusal shall not diminish the
102resident’s access to care for the primary purpose of diagnosis or treatment.

103 “(c) Subsections (a) and (b) of this section shall not apply to the extent that they are
104incompatible with any professionally reasonable clinical judgment and where the staff provides
105written documentation of the basis for that decision to the resident or the representative of the
106resident.

107 “§ 2-1402.92. Personal Information.

108 “(a) At the time of a resident’s admission to a long-term care facility, the facility shall
109gather information on the resident’s gender identity and preferred name and pronouns.

110 “(b) Long-term care facilities shall protect personally identifiable information regarding
111 residents’ sexual orientation, gender identity, transition history, and HIV status from
112 unauthorized disclosure, as required under the federal Health Insurance Portability and
113 Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d *et*
114 *seq.*), and any other applicable provision of federal or District law. A long-term care facility
115 shall take reasonable steps to minimize the likelihood of inadvertent or incidental disclosure of
116 that information to other residents, visitors, or staff, except to the extent necessary for staff to
117 perform their duties.

118 “§ 2-1402.93. Notice.

119 “Each long-term care facility covered by this section shall post notice in a conspicuous
120 location stating that the facility does not permit discrimination, including bullying, abuse, or
121 harassment on the basis of actual or perceived sexual orientation, gender identity or expression,
122 or HIV status, or based on association with an individual on account of that individual’s actual or
123 perceived sexual orientation, gender identity or expression, or HIV status. The notice described
124 under this subsection shall include information about a resident’s right to file a complaint of
125 discrimination with the Office on Aging.”

126 Sec. 5. Fiscal impact statement.

127 The Council adopts the fiscal impact statement in the committee report as the fiscal
128 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
129 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

130 Sec. 6. Effective date.

131 This act shall take effect following approval by the Mayor (or in the event of veto by the
132 Mayor, action by the Council to override the veto), a 30-day period of congressional review as

133provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
13424, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
135Columbia Register.