

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Act on the Aging to require the Mayor to interpret the term “greatest social need” under the federal Older Americans Act of 1965 to include LGBTQ seniors and seniors with HIV for the purpose of allocating funds provided to the District; and to amend the Human Rights Act of 1977 to establish an LGBTQ and HIV long-term care bill of rights to provide rights and legal protections for LGBTQ residents and residents with HIV 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 Seniors and Seniors with HIV Amendment Act of 2020”.

Sec. 2. Title III of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24, D.C. Official Code § 7-503.01 *et seq.*) is amended by adding a new section 307a to read as follows:

“Sec. 309. LGBTQ seniors and seniors with HIV.

“(a) For the purposes of administering the provisions of the Older Americans Act of 1965, approved July 14, 1965 (Pub. L. No. 89-73; 79 Stat. 218), the Department shall interpret the term “greatest social need,” as defined in section 102(24) of the Older Americans Act of 1965, approved September 30, 1992 (106 Stat. 1199; 42 U.S.C. § 3002(24)), to include LGBTQ seniors and seniors with HIV.

“(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall promulgate rules to carry out the purposes of this section. The rules shall be promulgated within 210 days of the effective date of this section.

“(c) For purposes of this section, the term:

“(1) “HIV” means the human immunodeficiency virus.

“(2) “LGBTQ” means an individual who identifies as lesbian, gay, bisexual, or transgender, is questioning or exploring their sexuality or sexual identity, or is concerned about applying a social label to themselves related to their sexuality or sexual identity, and who is a resident of the District of Columbia.

ENROLLED ORIGINAL

“(3) “Senior” means an individual who is 60 years of age or older.”.

Sec. 3. Title II of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.01 *et seq.*) is amended by adding a new part K to read as follows:

“PART K. Long-Term Care Facilities.

“Sec. 293. Definitions.

“For the purposes of this part:

“(1) “Caregiver” means an individual who provides medical or non-medical care to a resident of a long-term care facility.

“(2) “HIV” means the human immunodeficiency virus.

“(3) “Long-term care facility” shall have the same meaning as provided in section 101(7) of the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(7)).

“(4) “Resident” shall have the same meaning as provided in section 101(13) of the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(13)).

“(5) “Resident’s representative” shall have the same meaning as provided in section 101(14) of the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(14)).

“(6) “Staff” means an employee or contractor of a long-term care facility.

“Sec. 294. Prohibitions.

“(a) It shall be an unlawful discriminatory practice for a long-term care facility or staff to do any of the following to an individual because of an individual’s actual or perceived sexual orientation, gender identity or expression, or HIV status:

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

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

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

“(4) Deny a request by a resident to share a room with another resident;

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

“(6) Require a resident to show personal identification documentation or otherwise require a resident to provide evidence of their sex or gender to gain entrance to a restroom or other sex-segregated facility or setting that is available to other residents of the same gender identity or expression;

“(7) Knowingly refuse to use a resident’s preferred name or pronouns after being clearly informed of the resident’s preferred name or pronouns;

“(8) Deny a resident the right to clothing, accessories, or cosmetics, or to engage in grooming practices consistent with the resident’s gender identity or expression that are permitted for other residents of the same gender identity or expression;

“(9) Deny or restrict a resident’s right to privacy or free association with other residents or visitors, including the right to consensual expressions of intimacy or sexual relations; or

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

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

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

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

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

“(d) Nothing in this section shall be construed to require or excuse noncompliance with any provision of applicable federal or District law.

“Sec. 295. Personal information.

“(a) At the time of a resident’s admission to a long-term care facility, the resident shall have the option to provide information on the resident’s gender identity or expression and preferred name and pronouns.

“(b) Long-term care facilities shall protect personally identifiable information regarding a resident’s sexual orientation, gender identity or expression, transition history, and HIV status from unauthorized disclosure as may be required by any applicable provision of federal or District law. A long-term care facility shall take reasonable steps to minimize the likelihood of inadvertent or incidental disclosure of that information to other residents, visitors, or staff, except to the extent necessary for staff to perform their duties.

“Sec. 296. Notice.

“A long-term care facility shall post in a conspicuous location a notice stating that the facility does not permit discrimination, including harassment, on the basis of actual or perceived sexual orientation, gender identity or expression, or HIV status, or based on association with an

individual on account of that individual's actual or perceived sexual orientation, gender identity or expression, or HIV status. The notice shall include information about a resident's right to file a complaint for discrimination with the Office.

“Sec. 297. Training.

“(a)(1) At least once every 2 years, starting 60 days after the Office certifies a list of training providers, staff employed by a long-term care facility shall receive training on preventing discrimination based on sexual orientation or gender identity or expression when caring for LGBTQ seniors and seniors with HIV. A new staff member shall receive training within 6 months of hire unless the staff member provides proof of having received training in compliance with this section within the prior 2 years.

“(2) A long-term care facility shall be responsible for arranging and paying for the training.

“(b) At a minimum, the training shall include:

“(1) Definitions of common terms associated with sexual orientation, gender identity or expression, and HIV;

“(2) Best practices for communicating with or about LGBTQ seniors or seniors with HIV, including the use of preferred pronouns for a patient;

“(3) Information on health and social challenges historically faced by LGBTQ seniors and seniors with HIV, including discrimination faced by LGBTQ seniors and seniors with HIV when seeking care in a long-term care facility and health risks associated with transgender persons from long-term hormone use and reconstructive surgery;

“(4) Strategies for creating a safe and affirming environment for LGBTQ seniors and seniors with HIV, including information on how behavior towards LGBTQ seniors and seniors with HIV by caregivers has historically impacted those communities' access to medical care; and

“(5) Best practices for communicating with or about friends, family members, or other visitors of LGBTQ seniors or seniors with HIV.

“(c) The Office shall certify a list of training providers.

“(d)(1) Every 2 years, starting 60 days after the Office certifies a list of training providers, long-term care facilities shall file a report with the Office certifying that all employees have completed the training required by this section. The Office may assess a fine of no more than \$10,000 upon failure to file such a report.

“(2) Revenue generated from the fine shall be deposited into the LGBTQ Homeless Youth Training Grant Fund, established by section 4a of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006, effective May 3, 2014 (D.C. Law 20-100; D.C. Official Code § 2-1384).”.

Sec. 4. Applicability

(a) Section 3 shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provision identified in subsection(a) of this section.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia