

A-Engrossed Senate Bill 99

Ordered by the Senate May 19
Including Senate Amendments dated May 19

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services, Mental Health and Recovery)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires Department of Human Services to study department's processes for delivering services to aging adults. Directs department to submit findings to interim committees of Legislative Assembly related to human services not later than September 15, 2024.]

[Sunsets January 2, 2025.]

Prohibits certain facilities that provide long term care from taking specified actions based in whole or in part on resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status.

Imposes new requirements on facilities that provide long term care, with respect to care of residents who are lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation or who have human immunodeficiency virus. Permits Department of Human Services to impose civil penalties or take other administrative action for violation of provisions. Requires facility to ensure administrators and staff receive specified training. Requires entity that contracts with facility to provide services or supports to residents of facility to provide specified training to entity's staff persons. Excuses from compliance with requirements any requirement that is incompatible with professionally reasonable clinical judgment of management or staff of facility or with state or federal law.

Requires training required for facilities be completed by Long Term Care Ombudsman, deputy ombudsmen and designees of ombudsmen.

Establishes LGBTQIA2S+ subcommittee of Governor's Commission on Senior Services. Specifies membership and duties of subcommittee.

A BILL FOR AN ACT

Relating to aging adults; creating new provisions; and amending ORS 410.320.

Be It Enacted by the People of the State of Oregon:

BILL OF RIGHTS FOR LGBTQIA2S+ OLDER ADULT RESIDENTS OF LONG TERM AND COMMUNITY-BASED CARE FACILITIES

SECTION 1. Sections 2 to 8 of this 2023 Act are added to and made a part of ORS 441.015 to 441.087.

SECTION 2. As used in sections 2 to 8 of this 2023 Act:

(1) "Care facility" includes:

(a) A long term care facility;

(b) A residential care facility, including an assisted living facility, as defined in ORS 443.400; and

(c) An adult foster home, as defined in ORS 443.705.

(2) "Gender expression" means an individual's gender-related appearance and behavior,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 whether or not these are stereotypically associated with the sex the individual was assigned
2 at birth.

3 (3)(a) "Gender identity" means an individual's internal, deeply held knowledge or sense
4 of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal
5 sex, sex assigned at birth or name and sex as it appears in medical records or as it is de-
6 scribed by any other individual, including a family member, conservator or legal represen-
7 tative of the individual.

8 (b) "Gender identity" means the gender identity last expressed by an individual who lacks
9 the present ability to communicate.

10 (4) "Gender nonconforming" means having a gender expression that does not conform to
11 stereotypical expectations of one's gender.

12 (5) "Gender transition" means a process by which an individual begins to live according
13 to that individual's gender identity rather than the sex the person was assigned at birth. The
14 process may include changing the individual's clothing, appearance, name or identification
15 documents or undergoing medical treatments.

16 (6) "Harass" or "harassment" includes:

17 (a) To act in a manner that is unwanted, unwelcomed or uninvited, that demeans,
18 threatens or offends a resident and results in a hostile environment for a resident.

19 (b) To require a resident to show identity documents in order to gain entrance to a
20 restroom or other area of a care facility that is available to other individuals of the same
21 gender identity as the resident.

22 (7) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual,
23 Two Spirit, nonbinary or other minority gender identity or sexual orientation.

24 (8) "Resident" means a resident or a patient of a care facility.

25 (9) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or
26 sexual attraction, to other people.

27 (10) "Staff" or "staff person" means one or more individuals who:

28 (a) Are employed by a care facility to provide services or supports directly to residents;
29 or

30 (b) Contract with or are employed by an entity that contracts with the care facility to
31 provide services or supports directly to residents.

32 (11) "Transgender" means having a gender identity or gender expression that differs from
33 the sex one was assigned at birth, regardless of whether one has undergone or is in the
34 process of undergoing gender-affirming care.

35 **SECTION 3.** (1) A care facility and the staff of the facility may not take any of the fol-
36 lowing actions based in whole or in part on a resident's actual or perceived sexual orien-
37 tation, gender identity, gender expression or human immunodeficiency virus status:

38 (a) Deny admission to a care facility, transfer or refuse to transfer a resident within a
39 facility or to another facility or discharge or evict a resident from a facility;

40 (b) Deny a request by a resident to choose the resident's roommate, when a resident is
41 sharing a room;

42 (c) If rooms are assigned by gender, assign, reassign or refuse to assign a room to a
43 transgender or other LGBTQIA2S+ resident other than in accordance with the resident's
44 gender identity, unless at the request of the resident or if required by federal law;

45 (d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a

1 restroom that is available to other individuals of the same gender identity as the resident,
2 regardless of whether the resident is making a gender transition, has taken or is taking
3 hormones, has undergone gender affirmation surgery or presents as gender nonconforming;

4 (e) Repeatedly and willfully refuse to use a resident's chosen name or pronouns after
5 being reasonably informed of the resident's chosen name or pronouns;

6 (f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics,
7 or to engage in grooming practices, that are permitted to any other resident;

8 (g) Restrict a resident's right to associate with other residents or with visitors, including
9 the resident's right to consensual sexual relations or to display physical affection, unless the
10 restriction is uniformly applied to all residents in a nondiscriminatory manner;

11 (h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs
12 and bodily needs, or provide medical or nonmedical care that, to a similarly situated, rea-
13 sonable person, unduly demeans the resident's dignity or causes avoidable discomfort;

14 (i) Fail to accept a resident's verbal or written attestation of the resident's gender iden-
15 tity or require a resident to provide proof of the resident's gender identity using any form
16 of identification;

17 (j) Fail to take reasonable actions, within the care facility's control, to prevent discrim-
18 ination or harassment when the facility knows or should have known about the discrimi-
19 nation or harassment; or

20 (k) Refuse or willfully fail to provide any service, care or reasonable accommodation to
21 a resident or an applicant for services or care.

22 (2) A care facility shall include in its current nondiscrimination policy and in its written
23 materials providing notice of resident rights pursuant to ORS 441.605, and in all places and
24 on all materials where that policy or those written materials are posted, the following notice:

25 _____
26
27 (Name of care facility) does not discriminate and does not permit discrimination, includ-
28 ing but not limited to bullying, abuse or harassment, based on an individual's actual or per-
29 ceived sexual orientation, gender identity, gender expression or human immunodeficiency
30 virus status, or based on an individual's association with another individual on account of
31 the other individual's actual or perceived sexual orientation, gender identity, gender ex-
32 pression or human immunodeficiency virus status. If you believe you have experienced this
33 kind of discrimination, you may file a complaint with the Department of Human Services
34 at _____ (provide current contact information).
35 _____

36
37 **SECTION 4.** (1) A care facility shall implement procedures regarding resident records
38 generated at the time of admission and during the resident's stay to ensure that the records
39 include the resident's gender identity and the resident's chosen name and pronouns, as in-
40 dicated by the resident.

41 (2) Unless required by state or federal law, a care facility shall not disclose any per-
42 sonally identifiable information regarding:

43 (a) A resident's sexual orientation;

44 (b) Whether a resident is LGBTQIA2S+;

45 (c) A resident's gender transition status; or

1 (d) A resident’s human immunodeficiency virus status.

2 (3) A care facility shall take appropriate steps to minimize the likelihood of inadvertent
3 or accidental disclosure of information described in subsection (2) of this section to other
4 residents, visitors or facility staff, except to the minimum extent necessary for facility staff
5 to perform their duties.

6 (4) Informed consent shall be required in relation to any nontherapeutic examination or
7 observation of, or treatment provided to, a resident.

8 (5) A transgender resident shall be provided access to any assessments, therapies and
9 treatments that are recommended by the resident’s health care provider, including but not
10 limited to transgender-related medical care, hormone therapy and supportive counseling.

11 **SECTION 5.** A care facility that violates the provisions of sections 2 to 8 of this 2023 Act,
12 or that employs a staff member who violates the provisions of sections 2 to 8 of this 2023
13 Act, shall be subject to civil penalties or other administrative action as may be provided
14 under ORS 441.705 to 441.745 and rules adopted by the Department of Human Services.
15 Sections 2 to 8 of this 2023 Act may not be construed to limit the ability to bring any civil,
16 criminal or administrative action for conduct constituting a violation of any other provision
17 of law.

18 **SECTION 6.** (1) A care facility shall ensure that the administrators and staff employed
19 by the facility receive training, as part of the facility’s preservices or continuing education
20 required by law, concerning:

21 (a) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency
22 virus; and

23 (b) Preventing discrimination based on a resident’s sexual orientation, gender identity,
24 gender expression or human immunodeficiency virus status.

25 (2) At a minimum, the training required by subsection (1) of this section must include:

26 (a) The defined terms commonly associated with LGBTQIA2S+ individuals and human
27 immunodeficiency virus status;

28 (b) Best practices for communicating with or about LGBTQIA2S+ residents and resi-
29 dents living with human immunodeficiency virus, including the use of an individual’s chosen
30 name and pronouns;

31 (c) A description of the health and social challenges historically experienced by
32 LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including
33 discrimination when seeking or receiving care at care facilities and the demonstrated phys-
34 ical and mental health effects within the LGBTQIA2S+ community associated with such
35 discrimination; and

36 (d) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and
37 residents living with human immunodeficiency virus, including suggested changes to care
38 facility policies and procedures, forms, signage, communication between residents and their
39 families, activities, in-house services and staff training.

40 (3) The Department of Human Services shall establish by rule a process for a care facility
41 to request approval of the training provided by the facility under this section. The depart-
42 ment shall approve a training no later than 90 days after the date of request if:

43 (a) The care facility submits:

44 (A) A statement of the qualifications and training experience of the individual or entity
45 providing the training;

1 (B) The proposed methodology for providing the training either online or in person;

2 (C) An outline of the training; and

3 (D) Copies of the materials to be used in the training;

4 (b) The training meets the requirements of subsections (1) and (2) of this section; and

5 (c) The individual or entity providing the training demonstrates a commitment to ad-
6 vancing quality care for LGBTQIA2S+ residents and residents living with human
7 immunodeficiency virus in this state.

8 (4) A care facility shall designate two employees, one who represents management at the
9 facility and one who represents direct care staff at the facility, to receive the training de-
10 scribed in subsections (1) and (2) of this section within 12 months of being designated and
11 every two years thereafter. The designated employees shall serve as points of contact for the
12 facility regarding compliance with sections 2 to 8 of this 2023 Act and shall develop a general
13 training plan for the facility. In the event a designated employee ceases to be employed by
14 the facility, the facility shall designate another employee, who is representative of the em-
15 ployee group represented by the former designee and who shall complete the training re-
16 quired by subsections (1) and (2) of this section, to serve as a point of contact for the facility
17 regarding compliance with sections 2 to 8 of this 2023 Act and to have joint responsibility for
18 the facility's training plan.

19 (5) Within 12 months of hiring and every two years thereafter, a care facility shall pro-
20 vide to administrators and staff employed by the facility the training described in subsections
21 (1) and (2) of this section. Training provided subsequent to the initial training of an admin-
22 istrator or staff person employed by the facility must include, at a minimum, refresher
23 courses on the topics described in subsection (2)(b) and (d) of this section.

24 (6) A care facility shall retain records documenting the completion of the training re-
25 quired by subsections (1) and (2) of this section by each administrator and staff member at
26 the facility. The records shall be made available, upon request, to the Department of Human
27 Services and the office of the Long Term Care Ombudsman.

28 (7) A care facility is responsible for the cost of providing the training required by this
29 section to each administrator and staff person employed by the facility.

30 **SECTION 7.** (1) An entity that contracts with a care facility to provide services or sup-
31 ports directly to residents of the care facility shall provide to the entity's staff persons who
32 provide the services or supports training meeting the requirements in section 6 (1) and (2)
33 of this 2023 Act. The entity shall provide the training within 12 months of entering into the
34 contract with the care facility and every two years thereafter. The entity shall provide the
35 training to a newly hired staff person no later than 12 months after hiring.

36 (2) An individual who contracts with a care facility to provide services or supports di-
37 rectly to residents of the care facility shall complete a training that meets the requirements
38 of section 6 (1) and (2) of this 2023 Act no later than 12 months after entering into a contract
39 with the facility and every two years thereafter.

40 (3) Training provided subsequent to the initial training of an individual or of a staff per-
41 son employed by the entity must include, at a minimum, refresher courses on the topics
42 described in section 6 (2)(b) and (d) of this 2023 Act.

43 (4) The contracting individual or entity shall bear the cost of the training required by this
44 section.

45 **SECTION 8.** Any requirement in sections 2 to 8 of this 2023 Act may not be applied to a

1 **care facility if the requirement is incompatible with:**

2 (1) **The professionally reasonable clinical judgment of the management or staff of the**
3 **care facility; or**

4 (2) **A state or federal statute, federal regulation or administrative rule that applies to the**
5 **care facility.**

6 **SECTION 9. The Long Term Care Ombudsman, the deputy ombudsmen and their**
7 **designees shall complete a training meeting the requirements of section 6 (1) and (2) of this**
8 **2023 Act within 12 months of appointment and every two years thereafter. Training provided**
9 **subsequent to the initial training of the Long Term Care Ombudsman, the deputy**
10 **ombudsmen and their designees must include, at a minimum, refresher courses on the topics**
11 **described in section 6 (2)(b) and (d) of this 2023 Act.**

12 **SECTION 10. The Director of Human Services shall adopt rules in accordance with ORS**
13 **chapter 183 as necessary to implement the provisions of sections 2 to 8 of this 2023 Act.**

14 **SECTION 11. The training described in:**

15 (1) **Section 6 (1) and (2) of this 2023 Act shall first be provided to administrators and staff**
16 **employed by a care facility, individuals and staff employed by entities that contract with a**
17 **care facility to provide services or supports directly to residents of the care facility and the**
18 **Long Term Care Ombudsman, the deputy ombudsmen and their designees no later December**
19 **31, 2024.**

20 (2) **Section 6 (4) of this 2023 Act shall first be provided no later than July 1, 2024.**

21
22 **LGBTQIA2S+ SUBCOMMITTEE OF THE GOVERNOR'S**
23 **COMMISSION ON SENIOR SERVICES**
24

25 **SECTION 12. ORS 410.320 is amended to read:**

26 410.320. (1)(a) **The Governor's Commission on Senior Services is created. The commission shall**
27 **consist of at least 21 members appointed by the Governor for terms of three years.**

28 [(2)] (b) **Prior to making appointments, the Governor shall request and consider recommen-**
29 **dations from the area agencies [on aging] and other interested senior organizations. The Governor**
30 **shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two**
31 **years with such duties as the Governor shall prescribe. The membership of the commission shall be**
32 **composed of persons broadly representative of major public and private agencies who are experi-**
33 **enced in or have demonstrated particular interest in the special needs of elderly persons, including**
34 **persons who have been active in organizations and advocates on behalf of elderly persons. Addi-**
35 **tionally, membership shall include persons who are active in advocacy organizations representing**
36 **the interests of persons with disabilities who are served in programs under the Department of Hu-**
37 **man Services and consumers of services provided primarily to elderly persons and persons with**
38 **disabilities under department programs, including low income persons, minorities and persons with**
39 **disabilities. At least a majority of members shall be 60 years of age or older.**

40 [(3)] (c) **The Governor's Commission on Senior Services shall advise the Governor and the Di-**
41 **rector of Human Services on needs of elderly persons, and recommend actions by the Governor, the**
42 **Department of Human Services, other governmental entities and the private sector, appropriate to**
43 **meet such needs.**

44 [(4)] (d) **The commission shall have authority to study programs and budgets of all state agencies**
45 **that affect elderly persons. After such study, the commission shall make recommendations to the**

1 Governor and to the agencies involved. Such recommendations shall be designed to provide coordi-
2 nation of programs for elderly persons, to avoid unnecessary duplication in provision of services,
3 and to point out gaps in provision of services. The commission shall also recommend development
4 of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the
5 commission shall coordinate its efforts with other advisory groups within the Department of Human
6 Services to avoid duplication of effort.

7 [(5)] (e) The commission shall promote responsible statewide advocacy for elderly persons.

8 [(6)] (f) Members of the commission, other than legislators, shall be entitled to compensation and
9 expenses as provided in ORS 292.495.

10 **(2)(a) The LGBTQIA2S+ subcommittee of the Governor’s Commission on Senior Services**
11 **is established. The intent of the Legislative Assembly in establishing the subcommittee is to:**

12 **(A) Work to improve state agency interactions and communication with, and support of,**
13 **the LGBTQIA2S+ community; and**

14 **(B) Create advocacy opportunities for, and support equity for, LGBTQIA2S+ older adults**
15 **throughout state government.**

16 **(b) The purpose of the subcommittee is to advise the Governor and the director or the**
17 **director’s designee on the needs of LGBTQIA2S+ older adults and on how to improve the**
18 **delivery of services to meet the needs of LGBTQIA2S+ older adults.**

19 **(c) The Governor shall appoint nine members to the subcommittee after requesting and**
20 **considering recommendations from the department, area agencies and organizations that**
21 **serve or represent the LGBTQIA2S+ community.**

22 **(d) At least five members of the subcommittee must be individuals who identify as**
23 **LGBTQIA2S+, including at least one member who identifies as transgender.**

24 **(e) Members appointed to the subcommittee must be supportive of the intent of the**
25 **Legislative Assembly in establishing the subcommittee.**

26 **(f) Members of the subcommittee serve for a term of three years and may be reap-**
27 **pointed.**

28 **(g) Members of the subcommittee are not entitled to compensation, but at the discretion**
29 **of the commission may be reimbursed for actual and necessary travel and other expenses**
30 **reasonably incurred by the members in the performance of the official duties in the amount**
31 **and manner provided in ORS 292.495.**

32 **(h) As used in this section, “LGBTQIA2S+” means lesbian, gay, bisexual, transgender,**
33 **queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual**
34 **orientation.**

35 **SECTION 13. The Governor shall appoint the members of the LGBTQIA2S+ subcommit-**
36 **tee of the Governor’s Commission on Senior Services no later than September 1, 2024.**

37
38 **CAPTIONS**
39

40 **SECTION 14. The unit captions used in this 2023 Act are provided only for the conven-**
41 **ience of the reader and do not become part of the statutory law of this state or express any**
42 **legislative intent in the enactment of this 2023 Act.**
43