

## SENATE AMENDMENTS TO SENATE BILL 99

By COMMITTEE ON RULES

May 19

1 In line 2 of the printed bill, after “adults” insert “; creating new provisions; and amending ORS  
2 410.320”.

3 Delete lines 4 through 9 and insert:  
4

### 5 “BILL OF RIGHTS FOR LGBTQIA2S+ OLDER ADULT RESIDENTS 6 OF LONG TERM AND COMMUNITY-BASED CARE FACILITIES 7

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

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

11 “(1) ‘Care facility’ includes:

12 “(a) A long term care facility;

13 “(b) A residential care facility, including an assisted living facility, as defined in ORS  
14 443.400; and

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

16 “(2) ‘Gender expression’ means an individual’s gender-related appearance and behavior,  
17 whether or not these are stereotypically associated with the sex the individual was assigned  
18 at birth.

19 “(3)(a) ‘Gender identity’ means an individual’s internal, deeply held knowledge or sense  
20 of the individual’s gender, regardless of physical appearance, surgical history, genitalia, legal  
21 sex, sex assigned at birth or name and sex as it appears in medical records or as it is de-  
22 scribed by any other individual, including a family member, conservator or legal represen-  
23 tative of the individual.

24 “(b) ‘Gender identity’ means the gender identity last expressed by an individual who lacks  
25 the present ability to communicate.

26 “(4) ‘Gender nonconforming’ means having a gender expression that does not conform  
27 to stereotypical expectations of one’s gender.

28 “(5) ‘Gender transition’ means a process by which an individual begins to live according  
29 to that individual’s gender identity rather than the sex the person was assigned at birth. The  
30 process may include changing the individual’s clothing, appearance, name or identification  
31 documents or undergoing medical treatments.

32 “(6) ‘Harass’ or ‘harassment’ includes:

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

35 “(b) To require a resident to show identity documents in order to gain entrance to a

1 restroom or other area of a care facility that is available to other individuals of the same  
2 gender identity as the resident.

3 “(7) ‘LGBTQIA2S+’ means lesbian, gay, bisexual, transgender, queer, intersex, asexual,  
4 Two Spirit, nonbinary or other minority gender identity or sexual orientation.

5 “(8) ‘Resident’ means a resident or a patient of a care facility.

6 “(9) ‘Sexual orientation’ means romantic or sexual attraction, or a lack of romantic or  
7 sexual attraction, to other people.

8 “(10) ‘Staff’ or ‘staff person’ means one or more individuals who:

9 “(a) Are employed by a care facility to provide services or supports directly to residents;  
10 or

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

13 “(11) ‘Transgender’ means having a gender identity or gender expression that differs  
14 from the sex one was assigned at birth, regardless of whether one has undergone or is in the  
15 process of undergoing gender-affirming care.

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

19 “(a) Deny admission to a care facility, transfer or refuse to transfer a resident within a  
20 facility or to another facility or discharge or evict a resident from a facility;

21 “(b) Deny a request by a resident to choose the resident’s roommate, when a resident is  
22 sharing a room;

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

26 “(d) Prohibit a resident from using, or harass a resident who seeks to use or does use,  
27 a restroom that is available to other individuals of the same gender identity as the resident,  
28 regardless of whether the resident is making a gender transition, has taken or is taking  
29 hormones, has undergone gender affirmation surgery or presents as gender nonconforming;

30 “(e) Repeatedly and willfully refuse to use a resident’s chosen name or pronouns after  
31 being reasonably informed of the resident’s chosen name or pronouns;

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

34 “(g) Restrict a resident’s right to associate with other residents or with visitors, includ-  
35 ing the resident’s right to consensual sexual relations or to display physical affection, unless  
36 the restriction is uniformly applied to all residents in a nondiscriminatory manner;

37 “(h) Deny or restrict medical or nonmedical care that is appropriate to a resident’s or-  
38 gans and bodily needs, or provide medical or nonmedical care that, to a similarly situated,  
39 reasonable person, unduly demeans the resident’s dignity or causes avoidable discomfort;

40 “(i) Fail to accept a resident’s verbal or written attestation of the resident’s gender  
41 identity or require a resident to provide proof of the resident’s gender identity using any  
42 form of identification;

43 “(j) Fail to take reasonable actions, within the care facility’s control, to prevent dis-  
44 crimination or harassment when the facility knows or should have known about the dis-  
45 crimination or harassment; or

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

3 “(2) A care facility shall include in its current nondiscrimination policy and in its written  
4 materials providing notice of resident rights pursuant to ORS 441.605, and in all places and  
5 on all materials where that policy or those written materials are posted, the following notice:  
6 “

7  
8 (Name of care facility) does not discriminate and does not permit discrimination, includ-  
9 ing but not limited to bullying, abuse or harassment, based on an individual’s actual or per-  
10 ceived sexual orientation, gender identity, gender expression or human immunodeficiency  
11 virus status, or based on an individual’s association with another individual on account of  
12 the other individual’s actual or perceived sexual orientation, gender identity, gender ex-  
13 pression or human immunodeficiency virus status. If you believe you have experienced this  
14 kind of discrimination, you may file a complaint with the Department of Human Services  
15 at \_\_\_\_\_ (provide current contact information).  
16 “

17  
18 “SECTION 4. (1) A care facility shall implement procedures regarding resident records  
19 generated at the time of admission and during the resident’s stay to ensure that the records  
20 include the resident’s gender identity and the resident’s chosen name and pronouns, as in-  
21 dicated by the resident.

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

24 “(a) A resident’s sexual orientation;

25 “(b) Whether a resident is LGBTQIA2S+;

26 “(c) A resident’s gender transition status; or

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

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

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

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

37 “SECTION 5. A care facility that violates the provisions of sections 2 to 8 of this 2023  
38 Act, or that employs a staff member who violates the provisions of sections 2 to 8 of this 2023  
39 Act, shall be subject to civil penalties or other administrative action as may be provided  
40 under ORS 441.705 to 441.745 and rules adopted by the Department of Human Services.  
41 Sections 2 to 8 of this 2023 Act may not be construed to limit the ability to bring any civil,  
42 criminal or administrative action for conduct constituting a violation of any other provision  
43 of law.

44 “SECTION 6. (1) A care facility shall ensure that the administrators and staff employed  
45 by the facility receive training, as part of the facility’s preservices or continuing education

1 required by law, concerning:

2 “(a) Caring for LGBTQIA2S+ residents and residents living with human  
3 immunodeficiency virus; and

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

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

7 “(a) The defined terms commonly associated with LGBTQIA2S+ individuals and human  
8 immunodeficiency virus status;

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

12 “(c) A description of the health and social challenges historically experienced by  
13 LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including  
14 discrimination when seeking or receiving care at care facilities and the demonstrated phys-  
15 ical and mental health effects within the LGBTQIA2S+ community associated with such  
16 discrimination; and

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

21 “(3) The Department of Human Services shall establish by rule a process for a care fa-  
22 cility to request approval of the training provided by the facility under this section. The de-  
23 partment shall approve a training no later than 90 days after the date of request if:

24 “(a) The care facility submits:

25 “(A) A statement of the qualifications and training experience of the individual or entity  
26 providing the training;

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

28 “(C) An outline of the training; and

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

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

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

34 “(4) A care facility shall designate two employees, one who represents management at  
35 the facility and one who represents direct care staff at the facility, to receive the training  
36 described in subsections (1) and (2) of this section within 12 months of being designated and  
37 every two years thereafter. The designated employees shall serve as points of contact for the  
38 facility regarding compliance with sections 2 to 8 of this 2023 Act and shall develop a general  
39 training plan for the facility. In the event a designated employee ceases to be employed by  
40 the facility, the facility shall designate another employee, who is representative of the em-  
41 ployee group represented by the former designee and who shall complete the training re-  
42 quired by subsections (1) and (2) of this section, to serve as a point of contact for the facility  
43 regarding compliance with sections 2 to 8 of this 2023 Act and to have joint responsibility for  
44 the facility’s training plan.

45 “(5) Within 12 months of hiring and every two years thereafter, a care facility shall

1 provide to administrators and staff employed by the facility the training described in sub-  
2 sections (1) and (2) of this section. Training provided subsequent to the initial training of an  
3 administrator or staff person employed by the facility must include, at a minimum, refresher  
4 courses on the topics described in subsection (2)(b) and (d) of this section.

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

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

11 “SECTION 7. (1) An entity that contracts with a care facility to provide services or  
12 supports directly to residents of the care facility shall provide to the entity’s staff persons  
13 who provide the services or supports training meeting the requirements in section 6 (1) and  
14 (2) of this 2023 Act. The entity shall provide the training within 12 months of entering into  
15 the contract with the care facility and every two years thereafter. The entity shall provide  
16 the training to a newly hired staff person no later than 12 months after hiring.

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

21 “(3) Training provided subsequent to the initial training of an individual or of a staff  
22 person employed by the entity must include, at a minimum, refresher courses on the topics  
23 described in section 6 (2)(b) and (d) of this 2023 Act.

24 “(4) The contracting individual or entity shall bear the cost of the training required by  
25 this section.

26 “SECTION 8. Any requirement in sections 2 to 8 of this 2023 Act may not be applied to  
27 a care facility if the requirement is incompatible with:

28 “(1) The professionally reasonable clinical judgment of the management or staff of the  
29 care facility; or

30 “(2) A state or federal statute, federal regulation or administrative rule that applies to  
31 the care facility.

32 “SECTION 9. The Long Term Care Ombudsman, the deputy ombudsmen and their  
33 designees shall complete a training meeting the requirements of section 6 (1) and (2) of this  
34 2023 Act within 12 months of appointment and every two years thereafter. Training provided  
35 subsequent to the initial training of the Long Term Care Ombudsman, the deputy  
36 ombudsmen and their designees must include, at a minimum, refresher courses on the topics  
37 described in section 6 (2)(b) and (d) of this 2023 Act.

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

40 “SECTION 11. The training described in:

41 “(1) Section 6 (1) and (2) of this 2023 Act shall first be provided to administrators and  
42 staff employed by a care facility, individuals and staff employed by entities that contract with  
43 a care facility to provide services or supports directly to residents of the care facility and  
44 the Long Term Care Ombudsman, the deputy ombudsmen and their designees no later De-  
45 cember 31, 2024.

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

2  
3 “LGBTQIA2S+ SUBCOMMITTEE OF THE GOVERNOR’S  
4 COMMISSION ON SENIOR SERVICES  
5

6 “**SECTION 12.** ORS 410.320 is amended to read:

7 “410.320. (1)(a) The Governor’s Commission on Senior Services is created. The commission shall  
8 consist of at least 21 members appointed by the Governor for terms of three years.

9 “[2] (b) Prior to making appointments, the Governor shall request and consider recommen-  
10 dations from the area agencies [*on aging*] and other interested senior organizations. The Governor  
11 shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two  
12 years with such duties as the Governor shall prescribe. The membership of the commission shall be  
13 composed of persons broadly representative of major public and private agencies who are experi-  
14 enced in or have demonstrated particular interest in the special needs of elderly persons, including  
15 persons who have been active in organizations and advocates on behalf of elderly persons. Addi-  
16 tionally, membership shall include persons who are active in advocacy organizations representing  
17 the interests of persons with disabilities who are served in programs under the Department of Hu-  
18 man Services and consumers of services provided primarily to elderly persons and persons with  
19 disabilities under department programs, including low income persons, minorities and persons with  
20 disabilities. At least a majority of members shall be 60 years of age or older.

21 “[3] (c) The Governor’s Commission on Senior Services shall advise the Governor and the Di-  
22 rector of Human Services on needs of elderly persons, and recommend actions by the Governor, the  
23 Department of Human Services, other governmental entities and the private sector, appropriate to  
24 meet such needs.

25 “[4] (d) The commission shall have authority to study programs and budgets of all state agen-  
26 cies that affect elderly persons. After such study, the commission shall make recommendations to  
27 the Governor and to the agencies involved. Such recommendations shall be designed to provide co-  
28 ordination of programs for elderly persons, to avoid unnecessary duplication in provision of services,  
29 and to point out gaps in provision of services. The commission shall also recommend development  
30 of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the  
31 commission shall coordinate its efforts with other advisory groups within the Department of Human  
32 Services to avoid duplication of effort.

33 “[5] (e) The commission shall promote responsible statewide advocacy for elderly persons.

34 “[6] (f) Members of the commission, other than legislators, shall be entitled to compensation  
35 and expenses as provided in ORS 292.495.

36 “(2)(a) **The LGBTQIA2S+ subcommittee of the Governor’s Commission on Senior Ser-**  
37 **VICES is established. The intent of the Legislative Assembly in establishing the subcommittee**  
38 **is to:**

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

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

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

1           “(c) The Governor shall appoint nine members to the subcommittee after requesting and  
2 considering recommendations from the department, area agencies and organizations that  
3 serve or represent the LGBTQIA2S+ community.

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

6           “(e) Members appointed to the subcommittee must be supportive of the intent of the  
7 Legislative Assembly in establishing the subcommittee.

8           “(f) Members of the subcommittee serve for a term of three years and may be reap-  
9 pointed.

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

14          “(h) As used in this section, ‘LGBTQIA2S+’ means lesbian, gay, bisexual, transgender,  
15 queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual  
16 orientation.

17          “SECTION 13. The Governor shall appoint the members of the LGBTQIA2S+ subcom-  
18 mittee of the Governor’s Commission on Senior Services no later than September 1, 2024.

19  
20   “CAPTIONS

21  
22          “SECTION 14. The unit captions used in this 2023 Act are provided only for the conven-  
23 ience of the reader and do not become part of the statutory law of this state or express any  
24 legislative intent in the enactment of this 2023 Act.”.

25 \_\_\_\_\_