

SB 99-4  
(LC 2410)  
4/3/23 (LHF/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES (at the request of Oregon Association of Area Agencies on Aging and Disabilities)

**PROPOSED AMENDMENTS TO  
SENATE BILL 99**

1 Delete lines 4 through 9 of the printed bill and insert:

2

3 **“COMMISSION ON LGBTQIA2S+ OLDER ADULTS**

4

5 **“SECTION 1. (1) As used in this section, ‘LGBTQIA2S+’ means**  
6 **lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two**  
7 **Spirit, nonbinary or other minority gender identity or sexual orien-**  
8 **tation.**

9 **“(2) The Commission on LGBTQIA2S+ Older Adults is established**  
10 **in the Department of Human Services. The legislative intent of the**  
11 **commission is to:**

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

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

16 **“(3) The Commission on LGBTQIA2S+ Older Adults consists of 11**  
17 **members as follows:**

18 **“(a) The President of the Senate shall appoint one nonvoting**  
19 **member from among members of the Senate.**

20 **“(b) The Speaker of the House of Representatives shall appoint one**  
21 **nonvoting member from among members of the House of Represen-**

1 **tatives.**

2 **“(c) The Governor shall appoint nine members after requesting and**  
3 **considering recommendations from the Department of Human Ser-**  
4 **vices, area agencies, as defined in ORS 410.040, organizations that work**  
5 **with or advocate for LGBTQIA2S+ older adults, organizations that**  
6 **work with or advocate for long term care facilities, as defined in ORS**  
7 **442.015, residential care facilities, including assisted living facilities,**  
8 **as defined in ORS 443.400, adult foster homes, as defined in ORS**  
9 **443.705, and other interested organizations with experience in serving**  
10 **older adults.**

11 **“(4) The members of the commission who are appointed by the**  
12 **Governor must:**

13 **“(a) Be residents of this state;**

14 **“(b) Represent the racial, ethnic, geographic, socioeconomic, edu-**  
15 **cational and occupational diversity of this state;**

16 **“(c) To the greatest extent practicable, be 55 years of age or older**  
17 **or identify as LGBTQIA2S+;**

18 **“(d) Have knowledge or experience in one or more of the following:**

19 **“(A) Housing;**

20 **“(B) Health care;**

21 **“(C) Long term services and supports;**

22 **“(D) Dementia;**

23 **“(E) Human immunodeficiency virus;**

24 **“(F) Mental health;**

25 **“(G) Adult protective services;**

26 **“(H) Elder law, as a member of the Oregon State Bar;**

27 **“(I) LGBTQIA2S+ education, advocacy, research or public policy;**

28 **“(J) Racial and ethnic diversity and equity; or**

29 **“(K) A public or private agency that has experience with or knowl-**  
30 **edge of, or that advocates for the needs of, LGBTQIA2S+ older adults;**

1       “(e) Include a majority of at least three members who identify as  
2       LGBTQIA2S+ of whom at least one identifies as transgender; and

3       “(f) Be supportive of the legislative intent of the commission de-  
4       scribed in subsection (2) of this section.

5       “(5) The term of office of each member of the commission appointed  
6       by the Governor is four years, but a member serves at the pleasure  
7       of the Governor. Before the expiration of the term of a member, the  
8       Governor shall appoint a successor whose term begins on January 1  
9       next following. A member is eligible for reappointment. If there is a  
10      vacancy for any cause, the Governor shall make an appointment to  
11      become immediately effective for the unexpired term.

12      “(6) Members of the Legislative Assembly appointed to the com-  
13      mission are entitled to payment of compensation and expense re-  
14      imbursement under ORS 171.072, payable from funds appropriated to  
15      the Legislative Assembly.

16      “(7) A member of the commission who is appointed by the Governor  
17      is entitled to compensation and expenses as provided in ORS 292.495.

18      “(8) The commission shall select one of its members as chairperson  
19      and another as vice chairperson, for terms and with duties and powers  
20      necessary for the performance of the functions of the offices as the  
21      commission determines.

22      “(9) A majority of the voting members of the commission consti-  
23      tutes a quorum for the transaction of business.

24      “(10) Official action by the commission requires the approval of a  
25      majority of the voting members of the commission.

26      “(11) The commission shall meet at times and places specified by  
27      the call of the chairperson or of a majority of the voting members of  
28      the commission. The commission shall meet at least once every three  
29      months.

30      “(12) The commission shall:

1       “(a) Advise the Governor and the Director of Human Services, or  
2 the director’s designee, on the needs of LGBTQIA2S+ older adults.

3       “(b) Recommend actions by the Governor, the Department of Hu-  
4 man Services, other governmental entities or the private sector to  
5 address the needs of LGBTQIA2S+ older adults by:

6       “(A) Coordinating programs for LGBTQIA2S+ older adults;

7       “(B) Avoiding unnecessary duplication of services; and

8       “(C) Identifying gaps in the provision of services.

9       “(c) Examine the impact of state policies and rules on  
10 LGBTQIA2S+ older adults and make recommendations to ensure  
11 equal access to treatment, care and benefits.

12       “(d) Assess the funding and programming needed to provide services  
13 to the growing population of LGBTQIA2S+ older adults.

14       “(e) Identify best practices for:

15       “(A) Reducing isolation and preventing abuse and exploitation of,  
16 and promoting the independence and self-determination of,  
17 LGBTQIA2S+ older adults;

18       “(B) Strengthening caregiving;

19       “(C) Eliminating disparities; and

20       “(D) Improving the quality of life for LGBTQIA2S+ older adults.

21       “(f) Assess whether any policy or practice, or the absence of any  
22 policy or practice, promotes the premature admission of LGBTQIA2S+  
23 older adults to institutional care.

24       “(g) Make recommendations, if appropriate and necessary, for lower  
25 cost and culturally appropriate home- and community-based alterna-  
26 tives to institutional care.

27       “(h) Examine strategies for increasing providers’ awareness of the  
28 needs of LGBTQIA2S+ older adults and their caregivers and for im-  
29 proving the competence of providers in addressing the needs of  
30 LGBTQIA2S+ older adults and in improving access to treatment, ser-

1 vices and ongoing care, including preventive care.

2 “(i) Examine the feasibility of developing publicly accessible state-  
3 wide training curricula to improve the competency of health care and  
4 human services providers in delivering health, housing and long term  
5 support services to LGBTQIA2S+ older adults and their caregivers.

6 “(j) Examine outreach protocols to reduce the apprehension of  
7 LGBTQIA2S+ older adults in utilizing long term care providers that  
8 do not have a particular mission, skill set, training or culture to spe-  
9 cifically support LGBTQIA2S+ patients.

10 “(k) Have the authority to study programs and budgets of all state  
11 agencies that affect LGBTQIA2S+ adults.

12 “(13) In developing its recommendations under subsection (12) of  
13 this section, the commission shall consider best policies and practices  
14 used in other states and jurisdictions.

15 “(14) No later than June 30 of each even-numbered year, the com-  
16 mission shall submit a report on the commission’s activities, findings  
17 and recommendations, in the manner provided in ORS 192.245, to:

18 “(a) The Governor;

19 “(b) The Department of Human Services;

20 “(c) The Chief Clerk of the House of Representatives;

21 “(d) The Secretary of the Senate; and

22 “(e) The interim committees of the Legislative Assembly related to  
23 human services.

24 “(15)(a) The commission may establish any advisory or technical  
25 committees the commission considers necessary to aid and advise the  
26 commission in the performance of its functions. The committees may  
27 be continuing or temporary.

28 “(b) The commission shall determine the representation, member-  
29 ship, terms and organization of the committees and shall appoint the  
30 members of the committees.

1       “(c) Members of the advisory or technical committees are not en-  
2 titled to compensation, but in the discretion of the commission may  
3 be reimbursed from funds available to the commission for actual and  
4 necessary travel and other expenses reasonably incurred by the com-  
5 mittee members in the performance of their official duties in the  
6 manner and amount provided in ORS 292.495.

7       “SECTION 2. Notwithstanding the term of office specified by sec-  
8 tion 1 of this 2023 Act, of the members first appointed to the Com-  
9 mission on LGBTQIA2S+ Older Adults by the Governor:

10       “(1) Three shall serve for terms ending December 31, 2026.

11       “(2) Three shall serve for terms ending December 31, 2027.

12       “(3) Three shall serve for terms ending December 31, 2028.

13  
14       “**BILL OF RIGHTS FOR LGBTQIA2S+ OLDER ADULT RESIDENTS**  
15       **OF LONG TERM AND COMMUNITY-BASED CARE FACILITIES**

16  
17       “SECTION 3. Sections 4 to 9 of this 2023 Act are added to and made  
18 a part of ORS 441.015 to 441.087.

19       “SECTION 4. As used in sections 4 to 9 of this 2023 Act:

20       “(1) ‘Care facility’ includes:

21       “(a) A long term care facility, as defined in ORS 442.015;

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

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

25       “(2) ‘Gender expression’ means an individual’s gender-related ap-  
26 pearance and behavior, whether or not these are stereotypically asso-  
27 ciated with the sex the individual was assigned at birth.

28       “(3)(a) ‘Gender identity’ means an individual’s internal, deeply held  
29 knowledge or sense of the individual’s gender, regardless of physical  
30 appearance, surgical history, genitalia, legal sex, sex assigned at birth

1 or name and sex as it appears in medical records or as it is described  
2 by any other individual, including a family member, conservator or  
3 legal representative of the individual.

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

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

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

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

14 “(a) To act in a manner that is unwanted, unwelcomed or unin-  
15 vited, that demeans, threatens or offends a resident and results in a  
16 hostile environment for a resident.

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

21 “(7) ‘LGBTQIA2S+’ means lesbian, gay, bisexual, transgender,  
22 queer, intersex, asexual, Two Spirit, nonbinary or other minority  
23 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  
26 lack of romantic or sexual attraction, to other people.

27 “(10) ‘Staff’ or ‘staff person’ means individuals or an individual  
28 who:

29 “(a) Is or are employed by a care facility to provide services or  
30 supports directly to residents; or

1       **“(b) Contract or contracts with or is or are employed by an entity**  
2 **that contracts with the care facility to provide services or supports**  
3 **directly to residents.**

4       **“(11) ‘Transgender’ means having a gender identity or gender ex-**  
5 **pression that differs from the sex one was assigned at birth, regardless**  
6 **of whether one has undergone or is in the process of undergoing**  
7 **gender-affirming care.**

8       **“SECTION 5. (1) A care facility and the staff of the facility may not**  
9 **take any of the following actions based in whole or in part on a**  
10 **resident’s actual or perceived sexual orientation, gender identity,**  
11 **gender expression or human immunodeficiency virus status:**

12       **“(a) Deny admission to a care facility, transfer or refuse to transfer**  
13 **a resident within a facility or to another facility or discharge or evict**  
14 **a resident from a facility;**

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

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

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

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

30       **“(f) Deny a resident the right to wear or be dressed in clothing,**

1 accessories or cosmetics, or to engage in grooming practices, that are  
2 permitted to any other resident;

3 “(g) Restrict a resident’s right to associate with other residents or  
4 with visitors, including the resident’s right to consensual sexual re-  
5 lations or to display physical affection, unless the restriction is uni-  
6 formly applied to all residents in a nondiscriminatory manner;

7 “(h) Deny or restrict medical or nonmedical care that is appropriate  
8 to a resident’s organs and bodily needs, or provide medical or non-  
9 medical care that, to a similarly situated, reasonable person, unduly  
10 demeans the resident’s dignity or causes avoidable discomfort;

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

14 “(j) Fail to take reasonable actions, within the care facility’s con-  
15 trol, to prevent discrimination or harassment when the facility knows  
16 or should have known about the discrimination or harassment; or

17 “(k) Refuse or willfully fail to provide any service, care or reason-  
18 able accommodation to a resident or an applicant for services or care.

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

23 “ \_\_\_\_\_  
24 (Name of care facility) does not discriminate and does not permit  
25 discrimination, including but not limited to bullying, abuse or  
26 harassment, based on an individual’s actual or perceived sexual ori-  
27 entation, gender identity, gender expression or human  
28 immunodeficiency virus status, or based on an individual’s association  
29 with another individual on account of the other individual’s actual or  
30 perceived sexual orientation, gender identity, gender expression or

1 human immunodeficiency virus status. If you believe you have expe-  
2 rienced this kind of discrimination, you may file a complaint with the  
3 Department of Human Services at \_\_\_\_\_ (provide current contact in-  
4 formation).

5 “ \_\_\_\_\_  
6 **“SECTION 6. (1) A care facility shall implement procedures re-  
7 garding resident records generated at the time of admission and during  
8 the resident’s stay to ensure that the records include the resident’s  
9 gender identity and the resident’s chosen name and pronouns, as in-  
10 dicated by the resident.**

11 **“(2) Unless required by state or federal law, a care facility shall not  
12 disclose any personally identifiable information regarding:**

- 13 **“(a) A resident’s sexual orientation;**
- 14 **“(b) Whether a resident is LGBTQIA2S+;**
- 15 **“(c) A resident’s gender transition status; or**
- 16 **“(d) A resident’s human immunodeficiency virus status.**

17 **“(3) A care facility shall take appropriate steps to minimize the  
18 likelihood of inadvertent or accidental disclosure of information de-  
19 scribed in subsection (2) of this section to other residents, visitors or  
20 facility staff, except to the minimum extent necessary for facility staff  
21 to perform their duties.**

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

25 **“(5) A transgender resident shall be provided access to any assess-  
26 ments, therapies and treatments that are recommended by the  
27 resident’s health care provider, including but not limited to  
28 transgender-related medical care, hormone therapy and supportive  
29 counseling.**

30 **“SECTION 7. A care facility that violates the provisions of sections**

1 4 to 9 of this 2023 Act, or that employs a staff member who violates  
2 the provisions of sections 4 to 9 of this 2023 Act, shall be subject to  
3 civil penalties or other administrative action as may be provided under  
4 ORS 441.705 to 441.745 and rules adopted by the Department of Human  
5 Services. Sections 4 to 9 of this 2023 Act may not be construed to limit  
6 the ability to bring any civil, criminal or administrative action for  
7 conduct constituting a violation of any other provision of law.

8 **“SECTION 8. (1) A care facility shall ensure that the administrators  
9 and staff employed by the facility receive training, as part of the  
10 facility’s preservices or continuing education required by law, con-  
11 cerning:**

12 **“(a) Caring for LGBTQIA2S+ residents and residents living with  
13 human immunodeficiency virus; and**

14 **“(b) Preventing discrimination based on a resident’s sexual orien-  
15 tation, gender identity, gender expression or human immunodeficiency  
16 virus status.**

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

19 **“(a) The defined terms commonly associated with LGBTQIA2S+  
20 individuals and human immunodeficiency virus status;**

21 **“(b) Best practices for communicating with or about LGBTQIA2S+  
22 residents and residents living with human immunodeficiency virus,  
23 including the use of an individual’s chosen name and pronouns;**

24 **“(c) A description of the health and social challenges historically  
25 experienced by LGBTQIA2S+ residents and residents living with hu-  
26 man immunodeficiency virus, including discrimination when seeking  
27 or receiving care at care facilities and the demonstrated physical and  
28 mental health effects within the LGBTQIA2S+ community associated  
29 with such discrimination; and**

30 **“(d) Strategies to create a safe and affirming environment for**

1 **LGBTQIA2S+ residents and residents living with human**  
2 **immunodeficiency virus, including suggested changes to care facility**  
3 **policies and procedures, forms, signage, communication between resi-**  
4 **dents and their families, activities, in-house services and staff train-**  
5 **ing.**

6 **“(3) The Department of Human Services shall establish by rule a**  
7 **process for a care facility to request approval of the training provided**  
8 **by the facility under this section. The department shall approve a**  
9 **training no later than 90 days after the date of request if:**

10 **“(a) The care facility submits:**

11 **“(A) A statement of the qualifications and training experience of**  
12 **the individual or entity providing the training;**

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

15 **“(C) An outline of the training; and**

16 **“(D) Copies of the materials to be used in the training.**

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

19 **“(c) The individual or entity providing the training demonstrates a**  
20 **commitment to advancing quality care for LGBTQIA2S+ residents and**  
21 **residents living with human immunodeficiency virus in this state.**

22 **“(4) A care facility shall designate two employees, one who repres-**  
23 **ents management at the facility and one who represents direct care**  
24 **staff at the facility, to receive the training described in subsections (1)**  
25 **and (2) of this section within 12 months of being designated and every**  
26 **two years thereafter. The designated employees shall serve as points**  
27 **of contact for the facility regarding compliance with sections 4 to 9**  
28 **of this 2023 Act and shall develop a general training plan for the fa-**  
29 **ility. In the event a designated employee ceases to be employed by the**  
30 **facility, the facility shall designate another employee, who is repre-**

1 **sentative of the employee group represented by the former designee**  
2 **and who shall complete the in-person training required by subsections**  
3 **(1) and (2) of this section, to serve as a point of contact for the facility**  
4 **regarding compliance with sections 4 to 9 of this 2023 Act and to have**  
5 **joint responsibility for the facility’s training plan.**

6 **“(5) Within 12 months of hiring and every two years thereafter, a**  
7 **care facility shall provide to administrators and staff employed by the**  
8 **facility the training described in subsections (1) and (2) of this section.**  
9 **Training provided subsequent to the initial training of an administra-**  
10 **tor or staff person employed by the facility must include, at a mini-**  
11 **mum, refresher courses on the topics described in subsection (2)(b) and**  
12 **(d) of this section.**

13 **“(6) A care facility shall retain records documenting the completion**  
14 **of the training required by subsections (1) and (2) of this section by**  
15 **each administrator and staff member at the facility. The records shall**  
16 **be made available, upon request, to the Department of Human Ser-**  
17 **vices and the office of the Long Term Care Ombudsman.**

18 **“(7) A care facility is responsible for the cost of providing the**  
19 **training required by this section to each administrator and staff per-**  
20 **son employed by the facility.**

21 **“SECTION 9. A health care provider may not be required to comply**  
22 **with a provision of sections 4 to 9 of this 2023 Act governing the care**  
23 **of a resident in a care facility if compliance with the provision:**

24 **“(1) Is incompatible with the health care provider’s professionally**  
25 **reasonable clinical judgment; or**

26 **“(2) Conflicts with a state or federal law that applies to a care fa-**  
27 **cility.**

28 **“SECTION 10. (1) An entity that contracts with a care facility to**  
29 **provide services or supports directly to residents of the care facility**  
30 **shall provide to the entity’s staff persons who provide the services or**

1 supports training meeting the requirements in section 8 (1) and (2) of  
2 this 2023 Act. The entity shall provide the training within 12 months  
3 of entering into the contract with the care facility and every two years  
4 thereafter. The entity shall provide the training to a newly hired staff  
5 person no later than 12 months after hiring.

6 “(2) An individual who contracts with a care facility to provide  
7 services or supports directly to residents of the care facility shall  
8 complete a training that meets the requirements of section 8 (1) and  
9 (2) of this 2023 Act no later than 12 months after entering into a con-  
10 tract with the facility and every two years thereafter.

11 “(3) Training provided subsequent to the initial training of an indi-  
12 vidual or of a staff person employed by the entity must include, at a  
13 minimum, refresher courses on the topics described in section 8 (2)(b)  
14 and (d) of this 2023 Act.

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

17 **“SECTION 11.** The Long Term Care Ombudsman, the deputy  
18 ombudsmen and their designees shall complete a training meeting the  
19 requirements of section 8 (1) and (2) of this 2023 Act within 12 months  
20 of appointment and every two years thereafter. Training provided  
21 subsequent to the initial training of the Long Term Care Ombudsman,  
22 the deputy ombudsmen and their designees must include, at a mini-  
23 mum, refresher courses on the topics described in section 8 (2)(b) and  
24 (d) of this 2023 Act.

25 **“SECTION 12.** The Director of Human Services shall adopt rules in  
26 accordance with ORS chapter 183 as necessary to implement the pro-  
27 visions of sections 4 to 9 of this 2023 Act.

28 **“SECTION 13.** The training described in:

29 “(1) Section 8 (1) and (2) of this 2023 Act shall first be provided to  
30 administrators and staff employed by a care facility, individuals and

1 staff employed by entities that contract with a care facility to provide  
2 services or supports directly to residents of the care facility and the  
3 Long Term Care Ombudsman, the deputy ombudsmen and their  
4 designees no later December 31, 2024.

5 “(2) Section 8 (4) of this 2023 Act shall first be provided no later  
6 than July 1, 2024.

7 “SECTION 14. The unit captions used in this 2023 Act are provided  
8 only for the convenience of the reader and do not become part of the  
9 statutory law of this state or express any legislative intent in the  
10 enactment of this 2023 Act.”.

11 \_\_\_\_\_