

Requested by SENATE COMMITTEE ON RULES

**PROPOSED AMENDMENTS TO
SENATE BILL 99**

1 In line 2 of the printed bill, after “adults” insert “; creating new pro-
2 visions; and amending ORS 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
9 a part of ORS 441.015 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,
14 as defined in ORS 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 ap-
17 pearance and behavior, whether or not these are stereotypically asso-
18 ciated with the sex the individual was assigned at birth.**

19 **“(3)(a) ‘Gender identity’ means an individual’s internal, deeply held
20 knowledge or sense of the individual’s gender, regardless of physical
21 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 one or more individuals who:

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

30 “(b) Contract with or are employed by an entity that contracts with

1 the care facility to provide services or supports directly to residents.

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

6 **“SECTION 3. (1) A care facility and the staff of the facility may not
7 take any of the following actions based in whole or in part on a
8 resident’s actual or perceived sexual orientation, gender identity,
9 gender expression or human immunodeficiency virus status:**

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

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

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

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

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

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

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

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

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

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

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

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

21 “ _____

22 (Name of care facility) does not discriminate and does not permit
23 discrimination, including but not limited to bullying, abuse or
24 harassment, based on an individual’s actual or perceived sexual ori-
25 entation, gender identity, gender expression or human
26 immunodeficiency virus status, or based on an individual’s association
27 with another individual on account of the other individual’s actual or
28 perceived sexual orientation, gender identity, gender expression or
29 human immunodeficiency virus status. If you believe you have expe-
30 rienced this kind of discrimination, you may file a complaint with the

1 Department of Human Services at _____ (provide current contact in-
2 formation).

3 “ _____
4 **“SECTION 4. (1) A care facility shall implement procedures re-**
5 **garding resident records generated at the time of admission and during**
6 **the resident’s stay to ensure that the records include the resident’s**
7 **gender identity and the resident’s chosen name and pronouns, as in-**
8 **dicated by the resident.**

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

11 **“(a) A resident’s sexual orientation;**

12 **“(b) Whether a resident is LGBTQIA2S+;**

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

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

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

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

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

28 **“SECTION 5. A care facility that violates the provisions of sections**
29 **2 to 8 of this 2023 Act, or that employs a staff member who violates**
30 **the provisions of sections 2 to 8 of this 2023 Act, shall be subject to**

1 civil penalties or other administrative action as may be provided under
2 ORS 441.705 to 441.745 and rules adopted by the Department of Human
3 Services. sections 2 to 8 of this 2023 Act may not be construed to limit
4 the ability to bring any civil, criminal or administrative action for
5 conduct constituting a violation of any other provision of law.

6 **“SECTION 6. (1) A care facility shall ensure that the administrators
7 and staff employed by the facility receive training, as part of the
8 facility’s preservices or continuing education required by law, con-
9 cerning:**

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

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

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

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

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

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

28 **“(d) Strategies to create a safe and affirming environment for
29 LGBTQIA2S+ residents and residents living with human
30 immunodeficiency virus, including suggested changes to care facility**

1 policies and procedures, forms, signage, communication between resi-
2 dents and their families, activities, in-house services and staff train-
3 ing.

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

8 “(a) The care facility submits:

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

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

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

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

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

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

20 “(4) A care facility shall designate two employees, one who repres-
21 ents management at the facility and one who represents direct care
22 staff at the facility, to receive the training described in subsections (1)
23 and (2) of this section within 12 months of being designated and every
24 two years thereafter. The designated employees shall serve as points
25 of contact for the facility regarding compliance with sections 2 to 8
26 of this 2023 Act and shall develop a general training plan for the fa-
27 cility. In the event a designated employee ceases to be employed by the
28 facility, the facility shall designate another employee, who is repre-
29 sentative of the employee group represented by the former designee
30 and who shall complete the training required by subsections (1) and

1 (2) of this section, to serve as a point of contact for the facility re-
2 garding compliance with sections 2 to 8 of this 2023 Act and to have
3 joint responsibility for the facility’s training plan.

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

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

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

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

27 “(2) An individual who contracts with a care facility to provide
28 services or supports directly to residents of the care facility shall
29 complete a training that meets the requirements of section 6 (1) and
30 (2) of this 2023 Act no later than 12 months after entering into a con-

1 tract with the facility and every two years thereafter.

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

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

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

11 “(1) The professionally reasonable clinical judgment of the man-
12 agement or staff of the care facility; or

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

15 **“SECTION 9.** The Long Term Care Ombudsman, the deputy
16 ombudsmen and their designees shall complete a training meeting the
17 requirements of section 6 (1) and (2) of this 2023 Act within 12 months
18 of appointment and every two years thereafter. Training provided
19 subsequent to the initial training of the Long Term Care Ombudsman,
20 the deputy ombudsmen and their designees must include, at a mini-
21 mum, refresher courses on the topics described in section 6 (2)(b) and
22 (d) of this 2023 Act.

23 **“SECTION 10.** The Director of Human Services shall adopt rules in
24 accordance with ORS chapter 183 as necessary to implement the pro-
25 visions of sections 2 to 8 of this 2023 Act.

26 **“SECTION 11.** The training described in:

27 “(1) Section 6 (1) and (2) of this 2023 Act shall first be provided to
28 administrators and staff employed by a care facility, individuals and
29 staff employed by entities that contract with a care facility to provide
30 services or supports directly to residents of the care facility and the

1 **Long Term Care Ombudsman, the deputy ombudsmen and their**
2 **designees no later December 31, 2024.**

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

5

6 **“LGBTQIA2S+ SUBCOMMITTEE OF THE GOVERNOR’S**
7 **COMMISSION ON SENIOR SERVICES**

8

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

10 **“410.320. (1)(a)** The Governor’s Commission on Senior Services is created.
11 The commission shall consist of at least 21 members appointed by the Gov-
12 ernor for terms of three years.

13 **“[(2)] (b)** Prior to making appointments, the Governor shall request and
14 consider recommendations from the area agencies [*on aging*] and other in-
15 terested senior organizations. The Governor shall designate a member to
16 serve at the pleasure of the Governor as chairperson for a term of two years
17 with such duties as the Governor shall prescribe. The membership of the
18 commission shall be composed of persons broadly representative of major
19 public and private agencies who are experienced in or have demonstrated
20 particular interest in the special needs of elderly persons, including persons
21 who have been active in organizations and advocates on behalf of elderly
22 persons. Additionally, membership shall include persons who are active in
23 advocacy organizations representing the interests of persons with disabilities
24 who are served in programs under the Department of Human Services and
25 consumers of services provided primarily to elderly persons and persons with
26 disabilities under department programs, including low income persons, mi-
27 norities and persons with disabilities. At least a majority of members shall
28 be 60 years of age or older.

29 **“[(3)] (c)** The Governor’s Commission on Senior Services shall advise the
30 Governor and the Director of Human Services on needs of elderly persons,

1 and recommend actions by the Governor, the Department of Human Services,
2 other governmental entities and the private sector, appropriate to meet such
3 needs.

4 “[4] (d) The commission shall have authority to study programs and
5 budgets of all state agencies that affect elderly persons. After such study, the
6 commission shall make recommendations to the Governor and to the agencies
7 involved. Such recommendations shall be designed to provide coordination
8 of programs for elderly persons, to avoid unnecessary duplication in pro-
9 vision of services, and to point out gaps in provision of services. The com-
10 mission shall also recommend development of a comprehensive plan for
11 delivery of services to elderly persons. In carrying out these tasks, the com-
12 mission shall coordinate its efforts with other advisory groups within the
13 Department of Human Services to avoid duplication of effort.

14 “[5] (e) The commission shall promote responsible statewide advocacy
15 for elderly persons.

16 “[6] (f) Members of the commission, other than legislators, shall be en-
17 titled to compensation and expenses as provided in ORS 292.495.

18 **“(2)(a) The LGBTQIA2S+ subcommittee of the Governor’s Com-
19 mission on Senior Services is established. The intent of the Legislative
20 Assembly in establishing the subcommittee is to:**

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

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

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

29 **“(c) The Governor shall appoint nine members to the subcommittee
30 after requesting and considering recommendations from the depart-**

1 ment, area agencies and organizations that serve or represent the
2 LGBTQIA2S+ community.

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

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

9 “(f) Members of the subcommittee serve for a term of three years
10 and may be reappointed.

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

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

19 **“SECTION 13.** The Governor shall appoint the members of the
20 LGBTQIA2S+ subcommittee of the Governor’s Commission on Senior
21 Services no later than September 1, 2024.

22

23

“CAPTIONS

24

25 **“SECTION 14.** The unit captions used in this 2023 Act are provided
26 only for the convenience of the reader and do not become part of the
27 statutory law of this state or express any legislative intent in the
28 enactment of this 2023 Act.”.

29