SUMMARY

Establishes LGBTQIA2S+ Older Adults Commission. Designates membership, duties and functions.

Creates bill of rights for residents of skilled nursing facilities, intermediate care facilities, residential care facilities and adult foster homes who are LGBTQIA2S+.

Defines gender-related terms.

A BILL FOR AN ACT

Relating to LGBTQIA2S+ residents in long term care settings.

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

LGBTQIA2S+ OLDER ADULTS COMMISSION ESTABLISHED

SECTION 1. As used in sections 1 and 2 of this 2023 Act:

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

(2) “Gender identity” means an individual’s internal, deeply held knowledge or sense of the individual’s gender, regardless of the sex the individual was assigned at birth.

(3) “Intersex” means having sexual or reproductive anatomy or a chromosomal pattern that is not consistent with typical definitions of male or female.

(4) “LGBTQIA2S+” means lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, Two Spirit and other sexual
orientation, gender identity or gender expression used by an individual who is not cisgender or heterosexual.

(5) “Queer” means having a gender expression, gender identity or sexual orientation that is not cisgender or heterosexual.

(6) “Questioning” means exploring or being unsure about one's own sexual orientation, gender identity or gender expression.

(7) “Sexual orientation” means an individual’s romantic or sexual attraction to other people.

(8) “Transgender” means having a gender identity or gender expression that differs from the gender identity or gender expression stereotypically associated with the sex one was assigned at birth.

SECTION 2. (1) The LGBTQIA2S+ Older Adults Commission is established. The legislative intent of the commission is to:

(a) Work to improve state agency interactions and communication with the LGBTQIA2S+ community and state agency support of the LGBTQIA2S+ community; and

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

(2) The LGBTQIA2S+ Older Adults Commission consists of 15 members appointed as follows:

(a) The President of the Senate shall appoint one member from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.

(c) The Governor shall appoint 13 members after requesting and considering recommendations from the Department of Human Services, area agencies, as defined in ORS 410.040, organizations that work with or advocate for LGBTQIA2S+ older adults and other interested organizations with experience in serving older adults.

(3) The members of the commission who are appointed by the Governor must:
(a) Represent the racial, ethnic, geographic, socioeconomic status, educational and occupational diversity of this state;
(b) To the greatest extent practicable, be 55 years of age or older or identify as LGBTQIA2S+;
(c) Have knowledge or experience in one or more of the following:
   (A) Housing;
   (B) Health care;
   (C) Long term care;
   (D) Dementia;
   (E) Human immunodeficiency virus;
   (F) Mental health;
   (G) Adult protective services;
   (H) Elder law, as a member of the Oregon State Bar;
   (I) LGBTQIA2S+ research or public policy;
   (J) Racial and ethnic diversity and equity; or
   (K) A major public or private agency that has experience with or knowledge of, or that advocates for the needs of, LGBTQIA2S+ older adults;
(d) Include at least one individual who identifies as transgender; and
(e) Be supportive of the legislative intent of the commission described in subsection (1) of this section.

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

(5) Members of the Legislative Assembly appointed to the commission:
(a) Are nonvoting members of the commission and may act in an
advisory capacity only;

(b) Shall serve for two-year terms or until the end of the member’s
term in office, whichever is earlier; and

(c) Are entitled to payment of compensation and expense re-
imbursement under ORS 171.072, payable from funds appropriated to
the Legislative Assembly.

(6) A member of the commission who is not a member of the Leg-
islative Assembly is entitled to compensation and expenses as provided
in ORS 292.495.

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

(8) A majority of the voting members of the commission constitutes
a quorum for the transaction of business.

(9) The commission shall meet at times and places specified by the
call of the chairperson or of a majority of the members of the com-
mission. The commission shall meet at least once every other month.
The commission may also hold fact-finding hearings or other public
forums as it deems necessary.

(10) The commission shall:

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

(b) Recommend actions by the Governor, the Department of Human
Services, other governmental entities or the private sector to address
the needs of LGBTQIA2S+ older adults by:

(A) Coordinating programs for LGBTQIA2S+ older adults;

(B) Avoiding unnecessary duplication of services; and

(C) Identifying gaps in the provision of services.

(c) Have access to all programs and budgets of state agencies that
administer programs or offer services that affect LGBTQIA2S+ older adults.

(d) Analyze and study the health, housing, financial, psychosocial and long term care needs of LGBTQIA2S+ older adults.

(e) Make recommendations based on data collected under paragraph (d) of this subsection to improve the quality of benefits and services and improve access to benefits and services by LGBTQIA2S+ older adults.

(f) Examine state policies and rules that impact LGBTQIA2S+ older adults and make recommendations to ensure equity in treatment, care and benefits and access to treatment, care and benefits.

(g) Evaluate existing data and state research, including gaps in data, and make recommendations for improving data collection and research to better understand the needs of LGBTQIA2S+ older adults.

(h) Assess the funding and programming needed to provide services to the growing population of LGBTQIA2S+ older adults.

(i) Identify best practices for:

(A) Reducing and preventing abuse and exploitation of, and promoting the independence and self-determination of, LGBTQIA2S+ older adults:

(B) Using person-centered approaches, care and services;

(C) Strengthening caregiving;

(D) Eliminating disparities; and

(E) Improving the quality of life for LGBTQIA2S+ older adults.

(j) Assess whether any policy or practice, or the absence of any policy or practice, contributes to the premature admission of LGBTQIA2S+ older adults or older adults living with human immunodeficiency virus to institutional care.

(k) Make recommendations, if appropriate and necessary, for lower cost home- and community-based alternatives to institutional care that are LGBTQIA2S+ friendly.
(L) Make recommendations for publicly accessible statewide systems to identify settings and health care providers that are LGBTQIA2S+ friendly.

(m) Examine strategies for increasing long term care providers’ awareness of the caregiving needs of LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus and for improving the competence of providers in addressing the needs of LGBTQIA2S+ older adults and in improving access to treatment, services and ongoing care, including preventive care.

(n) Examine the feasibility of developing statewide training curricula to improve the competency of health care and human services providers in delivering health, housing and long term support services to LGBTQIA2S+ older adults.

(o) Make recommendations and support outreach strategies to provide training and other resources to long term care providers on the needs of LGBTQIA2S+ communities and on the need for providers to be accepting and welcoming to address the apprehension of LGBTQIA2S+ older adults in utilizing long term care providers that do not have a particular mission, skill set, training or culture to specifically support LGBTQIA2S+ patients.

(p) Coordinate the commission’s efforts with other commissions, councils and advisory groups within the department to strengthen activities and avoid duplicating the efforts of other commissions, councils and advisory groups.

(q) Advise the Governor and the department on the inclusion of LGBTQIA2S+ older adults in the development of Medicaid state plans, federal waivers or demonstration projects and in the development of key policies of the department, the Oregon Health Authority and other state agencies that impact LGBTQIA2S+ older adults.

(11) In developing its recommendations under subsection (10) of this section, the commission shall consider best policies and practices used
in other states and jurisdictions.

(12) No later than June 30 of each even-numbered year, the commission shall submit a report on the commission's activities, findings and recommendations, in the manner provided in ORS 192.245, to:

(a) The Governor;
(b) The department;
(c) The Chief Clerk of the House of Representatives;
(d) The Secretary of the Senate; and
(e) The interim committees of the Legislative Assembly related to human services.

(13) In accordance with applicable provisions of ORS chapter 183, the commission may adopt rules necessary for the administration of this section.

(14) (a) The commission may establish any subcommittees the commission considers necessary to provide technical expertise and aid and advise the commission in the performance of its functions. The subcommittees may be continuing, temporary, standing or ad hoc.

(b) The commission shall determine the representation, membership, terms and organization of the subcommittees and shall appoint the members of the subcommittees.

(c) Members of the subcommittees are entitled to compensation and reimbursement of actual and necessary travel and other expenses reasonably incurred by the subcommittee members in the performance of their official duties in the manner and amount provided in ORS 292.495.

SECTION 3. Notwithstanding the term of office specified by section 2 of this 2023 Act, of the members first appointed to the LGBTQIA2S+ Older Adults Commission by the Governor:

(1) Four shall serve for terms ending December 31, 2024.
(2) Four shall serve for terms ending December 31, 2025.
(3) Five shall serve for terms ending December 31, 2026.
BILL OF RIGHTS FOR LGBTQIA2S+ ADULTS
RESIDING IN NURSING FACILITIES, RESIDENTIAL
CARE FACILITIES AND ADULT FOSTER HOMES
(Skilled Nursing Facilities and Intermediate Care Facilities)

SECTION 4. Sections 5 to 9 of this 2023 Act are added to and made
a part of ORS 441.015 to 441.087.

SECTION 5. Definitions. As used in sections 5 to 9 of this 2023 Act:
(1) “Gender expression” means an individual’s gender-related ap-
pearance and behavior, whether or not these are stereotypically asso-
ciated with the sex the individual was assigned at birth.
(2) “Gender identity” means an individual’s internal, deeply held
knowledge or sense of the individual’s gender, regardless of the sex the
individual was assigned at birth.
(3) “Gender nonconforming” means having a gender expression that
does not conform to stereotypical expectations of one’s gender.
(4) “Gender transition” means a process by which an individual
whose gender identity differs from the sex the person was assigned at
birth begins to live according to that individual’s gender identity. The
process may include changing the individual’s clothing, appearance,
name or identification documents or undergoing medical treatments.
(5) “Harass” includes:
(a) To act in a manner that is unwanted, unwelcomed or uninvited,
that demeans, threatens or offends a resident and results in a hostile
environment for a resident.
(b) To require a resident to show identity documents in order to
gain entrance to a restroom or other area of the facility that is
available to other individuals of the same gender identity as the resi-
dent.
(6) “Intersex” means having sexual or reproductive anatomy or a
chromosomal pattern that is not consistent with typical definitions of

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male or female.

(7) “Legal representative” has the meaning given that term in ORS 441.600.

(8) “LGBTQIA2S+” means lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, Two Spirit and any other sexual orientation, gender identity or gender expression used by an individual who is not cisgender or heterosexual.

(9) “Queer” means having a gender expression, gender identity or sexual orientation that is not cisgender or heterosexual.

(10) “Questioning” means exploring or being unsure about one’s own sexual orientation, gender identity or gender expression.

(11) “Resident” means a resident or a patient of a skilled nursing facility or an intermediate care facility.

(12) “Sexual orientation” means romantic or sexual attraction to other people.

(13) “Staff” means all individuals who are employed by or who contract directly with a skilled nursing facility or an intermediate care facility.

(14) “Transgender” means having a gender identity or gender expression that differs from the gender identity or gender expression stereotypically associated with the sex one was assigned at birth.

(15) “Undesignated” means having a gender identity that is:

(a) Intersex;
(b) Agender;
(c) Amalgagender;
(d) Androgynous;
(e) Bigender;
(f) Demigender;
(g) Genderfluid;
(h) Genderqueer;
(i) Neutrois;
(j) Nonbinary;
(k) Pangender;
(L) Third sex;
(m) Two-spirit; or
(n) Otherwise unspecified as exclusively male or female.

SECTION 6. Bill of Rights for LGBTQIA2S+ residents. (1) The Legislative Assembly finds that LGBTQIA2S+ residents of skilled nursing facilities and intermediate care facilities have the right to be treated with respect and dignity and be free from discrimination based on a resident’s actual or perceived sexual orientation, gender identity, gender expression, intersex or undesignated status or human immunodeficiency virus status.

(2) Except as provided in subsection (3) of this section, staff of a skilled nursing facility or an intermediate care facility may not take any of the following actions based in whole or in part on a resident’s actual or perceived sexual orientation, gender identity, gender expression, intersex or undesignated status or human immunodeficiency virus status:

(a) Deny admission to a skilled nursing facility or an intermediate care facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility;
(b) Deny a request by a resident to choose the resident’s roommate, when a resident is sharing a room;
(c) Assign rooms other than in accordance with a transgender or undesignated resident’s gender identity, unless at the request of the transgender or undesignated resident;
(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making or has made a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or pre-
sents as gender nonconforming;

(e) Fail to ask a resident the resident’s chosen name and pronouns or fail to use a resident’s chosen name or pronouns;

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

(g) Restrict a resident’s right to associate with other residents or with visitors, including the resident’s right to consensual sexual relations;

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

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

(3) The requirements of sections 5 to 9 of this 2023 Act do not apply to the extent that compliance with the requirement is incompatible with a health care professional's reasonable clinical judgment.

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

__________________________________________________________________________

(Name of facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status, or based on an individual's association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status.
immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the office of the Long Term Care Ombudsman at _____ (provide current contact information).

(5) A facility or any individual subject to the supervision, direction or control of the facility may not retaliate against a resident who exercises, or on whose behalf a legal representative exercises, rights guaranteed by this section or by ORS 441.605, or by rules adopted by the Director of Human Services pursuant to section 10 of this 2023 Act or by the Department of Human Services pursuant to ORS 441.610. Retaliation under this subsection includes:

(a) Increasing charges;
(b) Decreasing services, rights or privileges;
(c) Threatening to increase charges or decrease services, rights or privileges; or
(d) Harassing or abusing, or threatening to harass or abuse, a resident in any manner.

SECTION 7. Records. (1) A skilled nursing facility and an intermediate care facility shall ensure that resident records, including records generated at the time of admission, include the resident's gender identity and the resident's chosen name and pronouns, as indicated by the resident.

(2) Unless required by state or federal law, a skilled nursing facility and an intermediate care facility shall not disclose any personally identifiable information regarding:
(a) A resident's sexual orientation;
(b) Whether a resident is transgender or undesignated;
(c) A resident's gender transition status;
(d) A resident's intersex status; or
(e) A resident's human immunodeficiency virus status.
(3) A skilled nursing facility and an intermediate care facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (2) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

(4) Unless expressly authorized by the resident or the resident's legal representative, skilled nursing facility and intermediate care facility staff who are not directly involved in providing direct care to a resident, including but not limited to a transgender, undesignated or gender nonconforming resident, shall not be present during a physical examination of, or the provision of personal care to, the resident if the resident is partially or fully unclothed. A facility shall use doors, curtains, screens or other effective visual barriers to provide bodily privacy for all residents, including but not limited to transgender, undesignated or gender nonconforming residents, whenever they are partially or fully unclothed.

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

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

SECTION 8. Civil penalties. A skilled nursing facility or an intermediate care facility that violates the requirements of sections 5 to 9 of this 2023 Act or rules adopted by the Director of Human Services under section 10 of this 2023 Act, or that employs a staff member who violates sections 5 to 9 of this 2023 Act or rules adopted by the director under section 10 of this 2023 Act, shall be subject to civil penalties or other administrative action as may be provided under rules adopted
by the Department of Human Services. Sections 5 to 9 of this 2023 Act may not be construed to limit the ability to bring any civil, criminal or administrative action for conduct constituting a violation of any other provision of law.

SECTION 9. Training for administrators, staff and providers. (1) A skilled nursing facility and an intermediate care facility shall ensure that the administrators and staff of the facility and health care providers associated with the facility receive training, on at least a biennial basis, concerning:

(a) Caring for LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus; and

(b) Preventing discrimination based on sexual orientation, gender identity, gender expression, intersex status, transgender status, undesignated status or human immunodeficiency virus status.

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

(a) The defined terms commonly associated with sexual orientation, gender identity, gender expression, intersex status, transgender status, undesignated status or human immunodeficiency virus;

(b) Best practices for communicating with or about LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus, including the use of an individual’s chosen name and pronouns;

(c) A description of the health and social challenges historically experienced by LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus, including discrimination when seeking or receiving care at skilled nursing facilities or intermediate care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination;

(d) Strategies to create a safe and affirming environment for LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus.
immunodeficiency virus, including suggested changes to skilled nursing facility or intermediate care facility policies and procedures, forms, signage, facilitation for communication between residents and their families, activities and staff training; and

(e) An overview of sections 5 to 9 of this 2023 Act.

(3) The training required by this section shall be provided by an entity that has demonstrated expertise in identifying the legal, social and medical challenges faced by, and creating safe and affirming environments for, LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus who reside in skilled nursing facilities or intermediate care facilities in this state.

(4) A skilled nursing facility or intermediate care facility shall designate two employees, one who represents management at the facility and one who represents direct care staff at the facility, to receive training described in subsections (1) and (2) of this section in an in-person setting. The designated employees shall serve as points of contact for the facility regarding compliance with sections 5 to 9 of this 2023 Act and shall develop a general training plan for the facility. In the event a designated employee ceases to be employed by the facility, the facility shall designate another employee, who is representative of the employee group represented by the former designee and who shall complete the in-person training required by subsections (1) and (2) of this section, to serve as a point of contact for the facility regarding compliance with sections 5 to 9 of this 2023 Act and have joint responsibility for the facility's training plan.

(5) Administrators and staff members currently employed by a skilled nursing facility or an intermediate care facility, and health care providers associated with the facility, shall complete the training required by subsections (1) and (2) of this section every two years. Newly hired administrators and staff of a skilled nursing facility or an intermediate care facility, and new health care providers associat-
ing with the facility, shall complete the training required by subsections (1) and (2) of this section within one year after the date of hire or association, unless the individual provides documentation demonstrating that the individual has completed equivalent training within the past two years, and every two years thereafter.

(6) A skilled nursing facility and an intermediate care facility shall retain records documenting the completion of the training required by subsections (1) and (2) of this section by each administrator and staff member at the facility and by health care providers associated with the facility. The records shall be made available, upon request, to the Department of Human Services and the office of the Long Term Care Ombudsman.

SECTION 10. Rules. The Director of Human Services shall adopt rules in accordance with ORS chapter 183 as necessary to implement the provisions of sections 5 to 9 of this 2023 Act.

(Residential Care Facilities)

SECTION 11. Sections 12 to 16 of this 2023 Act are added to and made a part of ORS 443.400 to 443.455.

SECTION 12. Definitions. As used in sections 12 to 16 of this 2023 Act:

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

(2) “Gender identity” means an individual’s internal, deeply held knowledge or sense of the individual’s gender, regardless of the sex the individual was assigned at birth.

(3) “Gender nonconforming” means having a gender expression that does not conform to stereotypical expectations of one’s gender.

(4) “Gender transition” means a process by which an individual
whose gender identity differs from the sex the person was assigned at birth begins to live according to that individual's gender identity. The process may include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments.

(5) "Harass" includes:
(a) To act in a manner that is unwanted, unwelcomed or uninvited, that demeans, threatens or offends a resident and results in a hostile environment for a resident.
(b) To require a resident to show identity documents in order to gain entrance to a restroom or other area of the facility that is available to other individuals of the same gender identity as the resident.

(6) "Intersex" means having sexual or reproductive anatomy or a chromosomal pattern that is not consistent with typical definitions of male or female.

(7) "Legal representative" has the meaning given that term in ORS 441.600.

(8) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, Two Spirit and any other sexual orientation, gender identity or gender expression used by an individual who is not cisgender or heterosexual.

(9) "Queer" means having a gender expression, gender identity or sexual orientation that is not cisgender or heterosexual.

(10) "Questioning" means exploring or being unsure about one's own sexual orientation, gender identity or gender expression.

(11) "Resident" means a resident or a patient of a residential care facility.

(12) "Sexual orientation" means romantic or sexual attraction to other people.

(13) "Staff" means all individuals who are employed by or who contract directly with a residential care facility.
(14) “Transgender” means having a gender identity or gender expression that differs from the gender identity or gender expression stereotypically associated with the sex one was assigned at birth.
(15) “Undesignated” means having a gender identity that is:
   (a) Intersex;
   (b) Agender;
   (c) Amalgagender;
   (d) Androgynous;
   (e) Bigender;
   (f) Demigender;
   (g) Genderfluid;
   (h) Genderqueer;
   (i) Neutrois;
   (j) Nonbinary;
   (k) Pangender;
   (L) Third sex;
   (m) Two-spirit; or
   (n) Otherwise unspecified as exclusively male or female.

SECTION 13. Bill of Rights for LGBTQIA2S+ residents. (1) The Legislative Assembly finds that LGBTQIA2S+ residents of residential care facilities have the right to be treated with respect and dignity and be free from discrimination based on a resident's actual or perceived sexual orientation, gender identity, gender expression, intersex or undesignated status or human immunodeficiency virus status.

(2) Except as provided in subsection (3) of this section, staff of a residential care facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression, intersex or undesignated status or human immunodeficiency virus status:

   (a) Deny admission to a residential care facility, transfer or refuse to transfer a resident within a facility or to another facility or dis-
charge or evict a resident from a facility;

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

c) Assign rooms other than in accordance with a transgender or undesignated resident’s gender identity, unless at the request of the transgender or undesignated resident;

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

e) Fail to ask a resident the resident’s chosen name and pronouns or fail to use a resident’s chosen name or pronouns;

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

(g) Restrict a resident’s right to associate with other residents or with visitors, including the resident’s right to consensual sexual relations;

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

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

(3) The requirements of sections 12 to 16 of this 2023 Act do not apply to the extent that compliance with the requirement is incompatible with a health care professional’s reasonable clinical judgment.

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

(Name of facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status, or based on an individual's association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the office of the Long Term Care Ombudsman at _____ (provide current contact information).

(5) A facility or any individual subject to the supervision, direction or control of the facility may not retaliate against a resident who exercises, or on whose behalf a legal representative exercises, rights guaranteed by this section or by ORS 441.605, or by rules adopted by the Director of Human Services pursuant to section 17 of this 2023 Act or by the Department of Human Services pursuant to ORS 441.610. Retaliation under this subsection includes:

(a) Increasing charges;
(b) Decreasing services, rights or privileges;
(c) Threatening to increase charges or decrease services, rights or privileges; or
(d) Harassing or abusing, or threatening to harass or abuse, a resident in any manner.

SECTION 14. Records. (1) A residential care facility shall ensure that resident records, including records generated at the time of ad-
mission, include the resident’s gender identity and the resident’s chosen name and pronouns, as indicated by the resident.

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

(a) A resident’s sexual orientation;
(b) Whether a resident is transgender or undesignated;
(c) A resident’s gender transition status;
(d) A resident’s intersex status; or
(e) A resident’s human immunodeficiency virus status.

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

(4) Unless expressly authorized by the resident or the resident’s legal representative, residential care facility staff who are not directly involved in providing direct care to a resident, including but not limited to a transgender, undesignated or gender nonconforming resident, shall not be present during a physical examination of, or the provision of personal care to, the resident if the resident is partially or fully unclothed. A facility shall use doors, curtains, screens or other effective visual barriers to provide bodily privacy for all residents, including but not limited to transgender, undesignated or gender nonconforming residents, whenever they are partially or fully unclothed.

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

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

SECTION 15. Civil penalties. A residential care facility that violates
the requirements of sections 12 to 16 of this 2023 Act or rules adopted
by the Director of Human Services under section 17 of this 2023 Act,
or that employs a staff member who violates sections 12 to 16 of this
2023 Act or rules adopted by the director under section 17 of this 2023
Act, shall be subject to civil penalties or other administrative action
as may be provided under rules adopted by the Department of Human
Services. Sections 12 to 16 of this 2023 Act may not be construed to
limit the ability to bring any civil, criminal or administrative action
for conduct constituting a violation of any other provision of law.

SECTION 16. Training for administrators, staff and providers. (1)
A residential care facility shall ensure that the administrators and
staff of the facility and health care providers associated with the fa-
cility receive training, on at least a biennial basis, concerning:

(a) Caring for LGBTQIA2S+ older adults and older adults living
with human immunodeficiency virus; and

(b) Preventing discrimination based on sexual orientation, gender
identity, gender expression, intersex status, transgender status, un-
designated status or human immunodeficiency virus status.

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

(a) The defined terms commonly associated with sexual orientation,
gender identity, gender expression, intersex status, transgender status,
undesignated status or human immunodeficiency virus;

(b) Best practices for communicating with or about LGBTQIA2S+
older adults and older adults living with human immunodeficiency vi-
rus, including the use of an individual’s chosen name and pronouns;

(c) A description of the health and social challenges historically
experienced by LGBTQIA2S+ older adults and older adults living with
human immunodeficiency virus, including discrimination when seeking or receiving care at residential care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination;

(d) Strategies to create a safe and affirming environment for LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus, including suggested changes to residential care facility policies and procedures, forms, signage, facilitation for communication between residents and their families, activities and staff training; and

(e) An overview of sections 12 to 16 of this 2023 Act.

(3) The training required by this section shall be provided by an entity that has demonstrated expertise in identifying the legal, social and medical challenges faced by, and creating safe and affirming environments for, LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus who reside in residential care facilities in this state.

(4) A residential care facility shall designate two employees, one who represents management at the facility and one who represents direct care staff at the facility, to receive training described in subsections (1) and (2) of this section in an in-person setting. The designated employees shall serve as points of contact for the facility regarding compliance with sections 12 to 16 of this 2023 Act and shall develop a general training plan for the facility. In the event a designated employee ceases to be employed by the facility, the facility shall designate another employee, who is representative of the employee group represented by the former designee and who shall complete the in-person training required by subsections (1) and (2) of this section, to serve as a point of contact for the facility regarding compliance with sections 12 to 16 of this 2023 Act and have joint responsibility for the facility’s training plan.
(5) Administrators and staff members currently employed by a residential care facility, and health care providers associated with the facility, shall complete the training required by subsections (1) and (2) of this section every two years. Newly hired administrators and staff of a residential care facility, and new health care providers associating with the facility, shall complete the training required by subsections (1) and (2) of this section within one year after the date of hire or association, unless the individual provides documentation demonstrating that the individual has completed equivalent training within the past two years, and every two years thereafter.

(6) A residential care facility shall retain records documenting the completion of the training required by subsections (1) and (2) of this section by each administrator and staff member at the facility and by health care providers associated with the facility. The records shall be made available, upon request, to the Department of Human Services and the office of the Long Term Care Ombudsman.

SECTION 17. Rules. The Director of Human Services shall adopt rules in accordance with ORS chapter 183 as necessary to implement the provisions of sections 12 to 16 of this 2023 Act.

(Adult Foster Homes)

SECTION 18. Sections 19 to 23 of this 2023 Act are added to and made a part of ORS 443.705 to 443.825.

SECTION 19. Definitions. As used in sections 19 to 23 of this 2023 Act:

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

(2) “Gender identity” means an individual’s internal, deeply held knowledge or sense of the individual’s gender, regardless of the sex the
individual was assigned at birth.

(3) “Gender nonconforming” means having a gender expression that does not conform to stereotypical expectations of one’s gender.

(4) “Gender transition” means a process by which an individual whose gender identity differs from the sex the person was assigned at birth begins to live according to that individual's gender identity. The process may include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments.

(5) “Harass” includes:

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

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

(6) “Intersex” means having sexual or reproductive anatomy or a chromosomal pattern that is not consistent with typical definitions of male or female.

(7) “Legal representative” has the meaning given that term in ORS 441.600.

(8) “LGBTQIA2S+” means lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, Two Spirit and any other sexual orientation, gender identity or gender expression used by an individual who is not cisgender or heterosexual.

(9) “Queer” means having a gender expression, gender identity or sexual orientation that is not cisgender or heterosexual.

(10) “Questioning” means exploring or being unsure about one’s own sexual orientation, gender identity or gender expression.

(11) “Resident” means a resident or a patient of an adult foster home.
“Sexual orientation” means romantic or sexual attraction to other people.

(13) “Staff” means all individuals who are employed by or who contract directly with an adult foster home.

“Transgender” means having a gender identity or gender expression that differs from the gender identity or gender expression stereotypically associated with the sex one was assigned at birth.

(15) “Undesignated” means having a gender identity that is:

(a) Intersex;
(b) Agender;
(c) Amalgagender;
(d) Androgynous;
(e) Bigender;
(f) Demigender;
(g) Genderfluid;
(h) Genderqueer;
(i) Neutrois;
(j) Nonbinary;
(k) Pangender;
(L) Third sex;
(m) Two-spirit; or
(n) Otherwise unspecified as exclusively male or female.

SECTION 20. Bill of Rights for LGBTQIA2S+ residents. (1) The Legislative Assembly finds that LGBTQIA2S+ residents of adult foster homes have the right to be treated with respect and dignity and be free from discrimination based on a resident’s actual or perceived sexual orientation, gender identity, gender expression, intersex or undesignated status or human immunodeficiency virus status.

(2) Except as provided in subsection (3) of this section, staff of an adult foster home may not take any of the following actions based in whole or in part on a resident’s actual or perceived sexual orientation,
gender identity, gender expression, intersex or undesignated status or
human immunodeficiency virus status:

(a) Deny admission to an adult foster home, transfer or refuse to
transfer a resident within a facility or to another facility or discharge
or evict a resident from a facility;

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

(c) Assign rooms other than in accordance with a transgender or
undesignated resident’s gender identity, unless at the request of the
transgender or undesignated resident;

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

(e) Fail to ask a resident the resident’s chosen name and pronouns
or fail to use a resident’s chosen name or pronouns;

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

(g) Restrict a resident’s right to associate with other residents or
with visitors, including the resident’s right to consensual sexual re-
lations;

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

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

(3) The requirements of sections 19 to 23 of this 2023 Act do not
apply to the extent that compliance with the requirement is incompatible with a health care professional's reasonable clinical judgment.

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

__________________________________________________________________________

(Name of facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status, or based on an individual's association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, intersex status, nonbinary status or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the office of the Long Term Care Ombudsman at ____ (provide current contact information).

__________________________________________________________________________

(5) A facility or any individual subject to the supervision, direction or control of the facility may not retaliate against a resident who exercises, or on whose behalf a legal representative exercises, rights guaranteed by this section or by ORS 441.605, or by rules adopted by the Director of Human Services pursuant to section 24 of this 2023 Act or by the Department of Human Services pursuant to ORS 441.610. Retaliation under this subsection includes:

(a) Increasing charges;
(b) Decreasing services, rights or privileges;
(c) Threatening to increase charges or decrease services, rights or privileges; or
(d) Harassing or abusing, or threatening to harass or abuse, a resident in any manner.

SECTION 21. Records. (1) An adult foster home shall ensure that resident records, including records generated at the time of admission, include the resident’s gender identity and the resident’s chosen name and pronouns, as indicated by the resident.

(2) Unless required by state or federal law, an adult foster home shall not disclose any personally identifiable information regarding:

(a) A resident’s sexual orientation;

(b) Whether a resident is transgender or undesignated;

(c) A resident’s gender transition status;

(d) A resident’s intersex status; or

(e) A resident’s human immunodeficiency virus status.

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

(4) Unless expressly authorized by the resident or the resident’s legal representative, adult foster home staff who are not directly involved in providing direct care to a resident, including but not limited to a transgender, undesignated or gender nonconforming resident, shall not be present during a physical examination of, or the provision of personal care to, the resident if the resident is partially or fully unclothed. A facility shall use doors, curtains, screens or other effective visual barriers to provide bodily privacy for all residents, including but not limited to transgender, undesignated or gender nonconforming residents, whenever they are partially or fully unclothed.

(5) Informed consent shall be required in relation to any nontherapeutic examination or observation of, or treatment provided
(6) A transgender resident shall be provided access to any assessments, therapies and treatments related to gender transition that are recommended by the resident's health care provider, including but not limited to transgender-related medical care, hormone therapy and supportive counseling.

SECTION 22. Civil penalties. An adult foster home that violates the requirements of sections 19 to 23 of this 2023 Act or rules adopted by the Director of Human Services under section 24 of this 2023 Act, or that employs a staff member who violates sections 19 to 23 of this 2023 Act or rules adopted by the director under section 24 of this 2023 Act, shall be subject to civil penalties or other administrative action as may be provided under rules adopted by the Department of Human Services. Sections 19 to 23 of this 2023 Act may not be construed to limit the ability to bring any civil, criminal or administrative action for conduct constituting a violation of any other provision of law.

SECTION 23. Training for administrators, staff and providers. (1) An adult foster home shall ensure that the administrators and staff of the facility and health care providers associated with the facility receive training, on at least a biennial basis, concerning:

(a) Caring for LGBTQIA2S+ older adults and older adults living with human immunodeficiency virus; and

(b) Preventing discrimination based on sexual orientation, gender identity, gender expression, intersex status, transgender status, undesignated status or human immunodeficiency virus status.

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

(a) The defined terms commonly associated with sexual orientation, gender identity, gender expression, intersex status, transgender status, undesignated status or human immunodeficiency virus;

(b) Best practices for communicating with or about LGBTQIA2S+
older adults and older adults living with human immunodeficiency vi-
rus, including the use of an individual’s chosen name and pronouns;
(c) A description of the health and social challenges historically
experienced by LGBTQIA2S+ older adults and older adults living with
human immunodeficiency virus, including discrimination when seek-
ing or receiving care at adult foster homes and the demonstrated
physical and mental health effects within the LGBTQIA2S+ commu-
nity associated with such discrimination;
(d) Strategies to create a safe and affirming environment for
LGBTQIA2S+ older adults and older adults living with human
immunodeficiency virus, including suggested changes to adult foster
home policies and procedures, forms, signage, facilitation for commu-
ication between residents and their families, activities and staff
training; and
(e) An overview of sections 19 to 23 of this 2023 Act.
(3) The training required by this section shall be provided by an
entity that has demonstrated expertise in identifying the legal, social
and medical challenges faced by, and creating safe and affirming en-
vironments for, LGBTQIA2S+ older adults and older adults living with
human immunodeficiency virus who reside in adult foster homes in
this state.
(4) An adult foster home shall designate two employees, one who
represents management at the facility and one who represents direct
care staff at the facility, to receive training described in subsections
(1) and (2) of this section in an in-person setting. The designated em-
employees shall serve as points of contact for the facility regarding
compliance with sections 19 to 23 of this 2023 Act and shall develop a
general training plan for the facility. In the event a designated em-
ployee ceases to be employed by the facility, the facility shall designate
another employee, who is representative of the employee group re-
represented by the former designee and who shall complete the in-person
training required by subsections (1) and (2) of this section, to serve as a point of contact for the facility regarding compliance with sections 19 to 23 of this 2023 Act and have joint responsibility for the facility’s training plan.

(5) Administrators and staff members currently employed by an adult foster home, and health care providers associated with the facility, shall complete the training required by subsections (1) and (2) of this section every two years. Newly hired administrators and staff of an adult foster home, and new health care providers associating with the facility, shall complete the training required by subsections (1) and (2) of this section within one year after the date of hire or association, unless the individual provides documentation demonstrating that the individual has completed equivalent training within the past two years, and every two years thereafter.

(6) An adult foster home shall retain records documenting the completion of the training required by subsections (1) and (2) of this section by each administrator and staff member at the facility and by health care providers associated with the facility. The records shall be made available, upon request, to the Department of Human Services and the office of the Long Term Care Ombudsman.

SECTION 24. Rules. The Director of Human Services shall adopt rules in accordance with ORS chapter 183 as necessary to implement the provisions of sections 19 to 23 of this 2023 Act.

APPLICABILITY

SECTION 25. The training described in sections 9, 16 and 23 of this 2023 Act must be first completed no later than six months after the effective date of this 2023 Act.

CAPTIONS

[32]
SECTION 26. The unit and section captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.