

HOUSE BILL 1010

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By: **Delegates Acevero, B. Barnes, Bridges, Charkoudian, Clippinger, Cullison, D.M. Davis, W. Fisher, Fraser-Hidalgo, Gilchrist, Guyton, Ivey, M. Jackson, Kaiser, Kerr, Korman, R. Lewis, Lierman, Love, McIntosh, Moon, Mosby, Palakovich Carr, Qi, Shetty, Smith, Solomon, Stewart, Wells, Wilkins, Williams, and P. Young**

Introduced and read first time: February 5, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Discrimination**
3 **(LGBTQ Senior Bill of Rights)**

4 FOR the purpose of prohibiting certain facilities or certain staff from discriminating against
5 certain individuals or residents on certain bases; requiring certain facilities to post
6 a certain notice next to the facility's nondiscrimination policy in certain locations;
7 requiring certain facilities to include a certain notice in certain materials; providing
8 for the contents of the notice; requiring certain facilities to keep certain records,
9 comply with certain laws, and to use doors, curtains, screens, or other visual barriers
10 for certain purposes; prohibiting certain facility staff from being present during
11 certain physical examinations or the provision of personal care to certain residents
12 under certain circumstances; requiring that all residents of a facility be informed of
13 and have certain rights; prohibiting a certain refusal by a certain resident from
14 diminishing access to certain care; providing that a person who violates this Act is
15 subject to certain penalties; defining certain terms; and generally relating to
16 discrimination by health care facilities.

17 BY adding to
18 Article – Health – General
19 Section 19–355.1
20 Annotated Code of Maryland
21 (2019 Replacement Volume)

22 BY repealing and reenacting, without amendments,
23 Article – Health – General
24 Section 19–359
25 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

19–355.1.

**(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.**

(2) “DISCRIMINATION” INCLUDES:

**(I) DENYING ADMISSION TO A FACILITY, TRANSFERRING OR
REFUSING TO TRANSFER A RESIDENT WITHIN A FACILITY OR TO ANOTHER FACILITY,
OR DISCHARGING OR EVICTING A RESIDENT FROM A FACILITY;**

**(II) DENYING A REQUEST BY RESIDENTS TO SHARE A ROOM IN A
FACILITY;**

**(III) IF ROOMS ARE ASSIGNED BY GENDER IN A FACILITY,
ASSIGNING, REASSIGNING, OR REFUSING TO ASSIGN A ROOM TO A TRANSGENDER
RESIDENT OTHER THAN IN ACCORDANCE WITH THE TRANSGENDER RESIDENT’S
GENDER IDENTITY, UNLESS AT THE TRANSGENDER RESIDENT’S REQUEST;**

**(IV) PROHIBITING A RESIDENT IN A FACILITY FROM USING, OR
HARASSING A RESIDENT WHO SEEKS TO USE, OR DOES USE, A RESTROOM AVAILABLE
TO OTHER INDIVIDUALS OF THE SAME GENDER IDENTITY, REGARDLESS OF
WHETHER THE RESIDENT IS MAKING A GENDER TRANSITION OR APPEARS TO BE
GENDER–NONCONFORMING;**

**(V) WILLFULLY AND REPEATEDLY FAILING TO USE A
RESIDENT’S PREFERRED NAME OR PRONOUNS AFTER BEING CLEARLY INFORMED OF
THE PREFERRED NAME OR PRONOUNS;**

**(VI) DENYING A RESIDENT THE RIGHT TO WEAR OR BE DRESSED
IN CLOTHING, ACCESSORIES, OR COSMETICS THAT ARE ALLOWED FOR ANY OTHER
RESIDENT;**

**(VII) RESTRICTING A RESIDENT’S RIGHT TO ASSOCIATE WITH
OTHER RESIDENTS OR VISITORS, INCLUDING THE RIGHT TO CONSENSUAL SEXUAL
RELATIONS, UNLESS THE RESTRICTION UNIFORMLY APPLIES TO ALL RESIDENTS IN
A NONDISCRIMINATORY MANNER; AND**

(VIII) DENYING OR RESTRICTING MEDICAL OR NONMEDICAL CARE THAT IS APPROPRIATE TO A RESIDENT'S ORGANS AND BODILY NEEDS, OR PROVIDING MEDICAL OR NONMEDICAL CARE IN A MANNER THAT, TO A SIMILARLY SITUATED REASONABLE INDIVIDUAL, UNDULY DEMEANS THE RESIDENT'S DIGNITY OR CAUSES AVOIDABLE DISCOMFORT.

(3) "FACILITY" HAS THE MEANING STATED IN § 19-343(A) OF THIS SUBTITLE.

(4) "GENDER EXPRESSION" MEANS THE REPRESENTATION OF GENDER AS EXPRESSED BY AN INDIVIDUAL'S NAME, PRONOUNS, CLOTHING, HAIRSTYLE, BEHAVIOR, VOICE, OR SIMILAR CHARACTERISTICS.

(5) "GENDER IDENTITY" HAS THE MEANING STATED IN § 20-101 OF THE STATE GOVERNMENT ARTICLE.

(6) "GENDER-NONCONFORMING" MEANS A PERSON WHOSE GENDER EXPRESSION DOES NOT CONFORM TO STEREOTYPICAL EXPECTATIONS OF HOW A MAN OR WOMAN SHOULD APPEAR OR ACT.

(7) "HARASSMENT" INCLUDES REQUIRING A RESIDENT OF A FACILITY TO SHOW IDENTITY DOCUMENTS TO GAIN ENTRANCE TO A RESTROOM AVAILABLE TO OTHER INDIVIDUALS OF THE SAME GENDER IDENTITY.

(8) "SEXUAL ORIENTATION" HAS THE MEANING STATED IN § 20-101 OF THE STATE GOVERNMENT ARTICLE.

(9) "TRANSGENDER" MEANS AN INDIVIDUAL WHOSE GENDER IDENTITY DIFFERS FROM THE INDIVIDUAL'S ASSIGNED OR PRESUMED SEX AT BIRTH.

(B) A FACILITY OR THE STAFF OF A FACILITY MAY NOT DISCRIMINATE AGAINST AN INDIVIDUAL OR A RESIDENT BASED ON THE ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, OR HUMAN IMMUNODEFICIENCY VIRUS (HIV) STATUS OF THE INDIVIDUAL OR RESIDENT.

(C) (1) EACH FACILITY SHALL:

(I) POST A NOTICE THAT MEETS THE REQUIREMENTS OF PARAGRAPH (3) OF THIS SUBSECTION AND THAT IS IN A FORM DEVELOPED BY THE DEPARTMENT; AND

(II) INCLUDE THE NOTICE REQUIRED TO BE POSTED UNDER

ITEM (I) OF THIS PARAGRAPH IN ANY MATERIALS THAT INCLUDE THE FACILITY'S NONDISCRIMINATION POLICY.

(2) THE NOTICE REQUIRED TO BE POSTED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE POSTED NEXT TO THE FACILITY'S NONDISCRIMINATION POLICY IN EACH LOCATION WHERE THE NONDISCRIMINATION POLICY IS POSTED.

(3) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROVIDE:

(I) THAT THE FACILITY DOES NOT DISCRIMINATE OR ALLOW DISCRIMINATION, INCLUDING BULLYING, ABUSE, OR HARASSMENT ON THE BASIS OF:

1. ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, OR HIV STATUS; OR

2. AN ASSOCIATION WITH ANOTHER INDIVIDUAL ON ACCOUNT OF THAT INDIVIDUAL'S ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, OR HIV STATUS; AND

(II) INFORMATION ABOUT FILING A COMPLAINT WITH THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN.

(D) (1) A FACILITY SHALL:

(I) KEEP RECORDS FOR A RESIDENT AT THE TIME OF ADMISSION THAT INCLUDE GENDER IDENTITY, THE NAME PROVIDED BY THE RESIDENT, AND EACH PRONOUN PROVIDED BY THE RESIDENT;

(II) COMPLY WITH ALL APPROPRIATE FEDERAL AND STATE LAWS REGARDING THE PRIVACY OF THE RESIDENT; AND

(III) USE DOORS, CURTAINS, SCREENS, OR OTHER VISUAL BARRIERS TO PROVIDE PRIVACY FOR RESIDENTS, INCLUDING TRANSGENDER OR GENDER-NONCONFORMING RESIDENTS, WHENEVER THE RESIDENT IS PARTIALLY OR FULLY UNCLOTHED.

(2) FACILITY STAFF WHO ARE NOT DIRECTLY INVOLVED WITH PROVIDING DIRECT CARE TO A RESIDENT, INCLUDING A TRANSGENDER OR GENDER-NONCONFORMING RESIDENT, MAY NOT BE PRESENT DURING A PHYSICAL EXAMINATION OR THE PROVISION OF PERSONAL CARE TO A RESIDENT IF THE

1 RESIDENT IS PARTIALLY OR FULLY UNCLOTHED WITHOUT THE PERMISSION OF THE
2 RESIDENT OR THE RESIDENT'S LEGALLY AUTHORIZED REPRESENTATIVE.

3 (3) (I) ALL RESIDENTS OF A FACILITY, INCLUDING TRANSGENDER
4 OR GENDER-NONCONFORMING RESIDENTS, SHALL BE INFORMED OF AND HAVE THE
5 RIGHT TO REFUSE TO BE EXAMINED, OBSERVED, OR TREATED BY FACILITY STAFF IF
6 THE PRIMARY PURPOSE OF THE EXAMINATION, OBSERVATION, OR TREATMENT IS
7 EDUCATIONAL OR INFORMATIONAL.

8 (II) A RESIDENT'S REFUSAL UNDER SUBPARAGRAPH (I) OF THIS
9 PARAGRAPH MAY NOT DIMINISH THE RESIDENT'S ACCESS TO CARE IF THE PRIMARY
10 PURPOSE OF THE CARE IS FOR DIAGNOSIS OR TREATMENT.

11 (E) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS SUBJECT
12 TO THE PENALTIES UNDER § 19-359 OF THIS SUBTITLE.

13 19-359.

14 (a) A person who operates a related institution in violation of the rules and
15 regulations that the Secretary adopts for related institutions is guilty of a misdemeanor
16 and on conviction is subject to a fine not exceeding \$1,000. Each day a violation is continued
17 after the first conviction is a separate offense.

18 (b) The Secretary may impose a civil money penalty not to exceed \$10,000 for each
19 offense under this section.

20 (c) (1) If a civil money penalty is imposed under this section or under § 19-358
21 of this subtitle, the Secretary shall issue an order which shall state the basis on which the
22 order is made, the amount of the civil money penalty imposed, and the manner in which
23 the amount of the civil money penalty was calculated.

24 (2) The operator of an unlicensed hospital or an unlicensed or unregistered
25 related institution shall have the right to appeal from the order imposing the civil money
26 penalty in accordance with Title 10, Subtitle 2 of the State Government Article
27 (Administrative Procedure Act – Contested Cases).

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2020.