

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1136

Introduced by Hunt, 8.

Read first time January 19, 2022

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to health care; to amend section 71-448,
- 2 Reissue Revised Statutes of Nebraska; to adopt the Senior Care LGBTQ
- 3 Discrimination Prevention Act; to provide for enforcement under the
- 4 Health Care Facility Licensure Act; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Senior Care LGBTQ Discrimination Prevention Act.

3 Sec. 2. For purposes of the Senior Care LGBTQ Discrimination
4 Prevention Act:

5 (1) Discrimination includes:

6 (a) Denying admission to a facility, transferring or refusing to
7 transfer a resident within a facility or to another facility, or
8 discharging or evicting a resident from a facility;

9 (b) Denying a request by residents to share a room in a facility;

10 (c) If rooms are assigned by gender in a facility, assigning,
11 reassigning, or refusing to assign a room to a transgender resident other
12 than in accordance with the transgender resident's gender identity,
13 unless at the transgender resident's request;

14 (d) Prohibiting a resident in a facility from using, or harassing a
15 resident who seeks to use, or does use, a restroom available to other
16 individuals of the same gender identity, regardless of whether the
17 resident is making a gender transition or appears to be gender-
18 nonconforming;

19 (e) Willfully and repeatedly failing to use a resident's preferred
20 name or pronouns after being clearly informed of the preferred name or
21 pronouns;

22 (f) Denying a resident the right to wear or be dressed in clothing,
23 accessories, or cosmetics that are allowed for any other resident;

24 (g) Restricting a resident's right to associate with other residents
25 or visitors, including the right to consensual sexual relations, unless
26 the restriction uniformly applies to all residents in a nondiscriminatory
27 manner; and

28 (h) Denying or restricting medical or nonmedical care that is
29 appropriate to a resident's organs and bodily needs; or

30 (i) Providing medical or nonmedical care to a resident in a manner
31 that, to a similarly situated reasonable individual, would unduly demean

1 such individual's dignity or cause avoidable discomfort;

2 (2) Facility means any of the following as defined in the Health
3 Care Facility Licensure Act: An assisted-living facility, an intermediate
4 care facility, a long-term care hospital, a PACE center, or a skilled
5 nursing facility;

6 (3) Gender expression means the representation of gender as
7 expressed by an individual's name, pronouns, clothing, hairstyle,
8 behavior, voice, or similar characteristics;

9 (4) Gender identity means the gender-related identity, appearance,
10 expression, or behavior of a person, regardless of the person's assigned
11 sex at birth, which may be demonstrated by:

12 (a) Consistent and uniform assertion of the person's gender
13 identity; or

14 (b) Any other evidence that the gender identity is sincerely held as
15 part of the person's core identity;

16 (5) Gender-nonconforming means a person whose gender expression does
17 not conform to stereotypical expectations of how a man or woman should
18 appear or act;

19 (6) Harassment includes requiring a resident of a facility to show
20 identity documents to gain entrance to a restroom available to other
21 individuals of the same gender identity;

22 (7) Sexual orientation means actual or perceived homosexuality,
23 heterosexuality, or bisexuality; and

24 (8) Transgender means an individual whose gender identity differs
25 from the individual's assigned or presumed sex at birth.

26 Sec. 3. A facility or the staff of a facility shall not
27 discriminate against an individual or a resident of such facility based
28 on the individual's or resident's sexual orientation, gender identity,
29 gender expression, or human immunodeficiency virus status.

30 Sec. 4. (1) Each facility shall post a notice in one or more
31 prominent locations within the facility that is in substantially the form

1 provided in this section.

2 (2) The notice shall:

3 (a) Explain that state law prohibits the facility from
4 discriminating or allowing discrimination, including bullying, abuse, or
5 harassment on the basis of:

6 (i) Sexual orientation, gender identity, gender expression, or human
7 immunodeficiency virus status; or

8 (ii) An individual's association with another individual on account
9 of that other individual's sexual orientation, gender identity, gender
10 expression, or human immunodeficiency virus status;

11 (b) Contain information on how to file a complaint under section
12 71-444; and

13 (c) Contain information regarding the prohibition on retaliation
14 provided in section 71-445.

15 Sec. 5. A facility shall:

16 (1) Keep records for a resident at the time of admission that
17 include the resident's gender identity and preferred name and pronouns;
18 and

19 (2) Comply with all appropriate federal and state laws regarding the
20 privacy of the resident.

21 Sec. 6. (1) A facility shall use doors, curtains, screens, or other
22 visual barriers to provide privacy for residents, including transgender
23 or gender-nonconforming residents, whenever the resident is partially or
24 fully unclothed.

25 (2) Facility staff who are not directly involved with providing
26 direct care to a resident, including a transgender or gender-
27 nonconforming resident, shall not be present during a physical
28 examination or the provision of personal care to a resident if the
29 resident is partially or fully unclothed without the permission of the
30 resident or the resident's legally authorized representative.

31 (3)(a) All residents of a facility, including transgender or gender-

1 nonconforming residents, shall be informed of and have the right to
2 refuse to be examined, observed, or treated by facility staff if the
3 primary purpose of the examination, observation, or treatment is
4 educational or informational.

5 (b) A facility shall not diminish a resident's access to care, if
6 the primary purpose of the care is for diagnosis or treatment, because
7 the resident exercises the right provided in this subsection.

8 Sec. 7. Section 71-448, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-448 The Division of Public Health of the Department of Health and
11 Human Services may take disciplinary action against a license issued
12 under the Health Care Facility Licensure Act on any of the following
13 grounds:

14 (1) Violation of any of the provisions of the Assisted-Living
15 Facility Act, the Health Care Facility Licensure Act, the Nebraska
16 Nursing Home Act, or the rules and regulations adopted and promulgated
17 under such acts;

18 (2) Committing or permitting, aiding, or abetting the commission of
19 any unlawful act;

20 (3) Conduct or practices detrimental to the health or safety of a
21 person residing in, served by, or employed at the health care facility or
22 health care service;

23 (4) A report from an accreditation body or public agency
24 sanctioning, modifying, terminating, or withdrawing the accreditation or
25 certification of the health care facility or health care service;

26 (5) Failure to allow an agent or employee of the Department of
27 Health and Human Services access to the health care facility or health
28 care service for the purposes of inspection, investigation, or other
29 information collection activities necessary to carry out the duties of
30 the Department of Health and Human Services;

31 (6) Discrimination or retaliation against a person residing in,

1 served by, or employed at the health care facility or health care service
2 who has submitted a complaint or information to the Department of Health
3 and Human Services;

4 (7) Discrimination or retaliation against a person residing in,
5 served by, or employed at the health care facility or health care service
6 who has presented a grievance or information to the office of the state
7 long-term care ombudsman;

8 (8) Failure to allow a state long-term care ombudsman or an
9 ombudsman advocate access to the health care facility or health care
10 service for the purposes of investigation necessary to carry out the
11 duties of the office of the state long-term care ombudsman as specified
12 in the rules and regulations adopted and promulgated by the Department of
13 Health and Human Services;

14 (9) Violation of the Emergency Box Drug Act or the Pharmacy Practice
15 Act;

16 (10) Failure to file a report required by section 38-1,127 or
17 71-552;

18 (11) Violation of the Medication Aide Act;

19 (12) Failure to file a report of suspected abuse or neglect as
20 required by sections 28-372 and 28-711;

21 (13) Violation of the Automated Medication Systems Act;~~or~~

22 (14) Violation of the Dialysis Patient Care Technician Registration
23 Act; or -

24 (15) Violation of the Senior Care LGBTQ Discrimination Prevention
25 Act.

26 Sec. 8. Original section 71-448, Reissue Revised Statutes of
27 Nebraska, is repealed.