

HOUSE BILL 1118

J3
HB 1010/20 – HGO

1lr2126

By: **Delegate Acevero**

Introduced and read first time: February 5, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Discrimination**

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

16 BY adding to
17 Article – Health – General
18 Section 19–355.1
19 Annotated Code of Maryland
20 (2019 Replacement Volume and 2020 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Health – General
23 Section 19–359
24 Annotated Code of Maryland
25 (2019 Replacement Volume and 2020 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

1 SITUATED REASONABLE INDIVIDUAL, UNDULY DEMEANS THE RESIDENT'S DIGNITY
2 OR CAUSES AVOIDABLE DISCOMFORT.

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

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

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

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

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

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

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

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

24 (C) (1) EACH FACILITY SHALL:

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

28 (II) INCLUDE THE NOTICE REQUIRED TO BE POSTED UNDER
29 ITEM (I) OF THIS PARAGRAPH IN ANY MATERIALS THAT INCLUDE THE FACILITY'S
30 NONDISCRIMINATION POLICY.

31 (2) THE NOTICE REQUIRED TO BE POSTED UNDER PARAGRAPH (1)(I)

1 OF THIS SUBSECTION SHALL BE POSTED NEXT TO THE FACILITY'S
2 NONDISCRIMINATION POLICY IN EACH LOCATION WHERE THE NONDISCRIMINATION
3 POLICY IS POSTED.

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

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

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

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

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

16 (D) (1) A FACILITY SHALL:

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

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

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

26 (2) FACILITY STAFF WHO ARE NOT DIRECTLY INVOLVED WITH
27 PROVIDING DIRECT CARE TO A RESIDENT, INCLUDING A TRANSGENDER OR GENDER
28 NONCONFORMING RESIDENT, MAY NOT BE PRESENT DURING A PHYSICAL
29 EXAMINATION OR THE PROVISION OF PERSONAL CARE TO A RESIDENT IF THE
30 RESIDENT IS PARTIALLY OR FULLY UNCLOTHED WITHOUT THE PERMISSION OF THE
31 RESIDENT OR THE RESIDENT'S LEGALLY AUTHORIZED REPRESENTATIVE.

32 (3) (I) ALL RESIDENTS OF A FACILITY, INCLUDING TRANSGENDER

1 OR GENDER NONCONFORMING RESIDENTS, SHALL BE INFORMED OF AND HAVE THE
2 RIGHT TO REFUSE TO BE EXAMINED, OBSERVED, OR TREATED BY FACILITY STAFF IF
3 THE PRIMARY PURPOSE OF THE EXAMINATION, OBSERVATION, OR TREATMENT IS
4 EDUCATIONAL OR INFORMATIONAL.

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

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

10 19-359.

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

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

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

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2021.