

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1118 (Delegate Acevero)
Health and Government Operations

Health Care Facilities – Discrimination

This bill prohibits a comprehensive care or extended care facility from discriminating against an individual or resident based on the individual’s or resident’s actual or perceived sexual orientation, gender identity, gender expression, or HIV status. Each facility must post a required notice of these prohibitions in a form developed by the Maryland Department of Health and include the notice in any materials that include the facility’s nondiscrimination policy. A person who violates any provision of the bill is subject to existing penalties, as specified.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Application of existing civil penalty provisions is not anticipated to have a material impact on State finances or operations.

Local Effect: Application of existing civil penalty provisions is not anticipated to have a material impact on local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Gender expression” means the representation of gender as expressed by an individual’s name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics.

“Gender nonconforming” means a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act.

“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.

“Transgender” means an individual whose gender identity differs from the individual’s assigned or presumed sex at birth.

“Discrimination” includes:

- 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;
- denying a request by residents to share a room in a facility;
- 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;
- 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;
- willfully and repeatedly failing to use a resident’s preferred name or pronouns after being clearly informed of the preferred name or pronouns;
- denying a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are allowed for any other resident;
- 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
- 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.

The required notice must provide (1) that the facility does not discriminate or allow discrimination, including bullying, abuse, or harassment on the basis of actual or perceived sexual orientation, gender identity, gender expression, or HIV status, or an association with another individual on account of that individual’s actual or perceived sexual orientation, gender identity, gender expression, or HIV status and (2) information about filing a complaint with the Office of the State Long-Term Care Ombudsman.

A facility must (1) 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; (2) comply with all appropriate federal and State laws regarding the privacy of the resident; and (3) 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. Facility staff who are not directly involved with providing direct care to a resident may not be present during a physical examination or provision of personal care if the resident is partially or fully unclothed without the permission of the resident (or the resident's legally authorized representative).

All residents of a facility, including transgender or gender nonconforming residents, must be informed of and have the right to refuse to be examined, observed, or treated by facility staff if the primary purpose of the examination, observation, or treatment is educational or informational. This refusal may not diminish the resident's access to care if the primary purpose of the care is for diagnosis or treatment.

Current Law: Under current Maryland regulations ([COMAR 10.07.02.09](#)), a licensed comprehensive care or extended care facility administrator is responsible for the overall conduct of the facility and must be responsible for the implementation and enforcement of all provisions of the patient's bill of rights regulations. When a resident is admitted to a comprehensive care or extended care facility, the resident must receive the patient's bill of rights in writing.

Current regulations ([COMAR 10.07.09.08](#)) designate that a resident has the right to, among others, (1) reside and receive services in a facility with reasonable accommodations for their needs and preferences, except when their needs or preferences endanger the health or safety of other residents; (2) receive treatment, care, and services in an environment that promotes the maintenance or enhancement of their quality of life; (3) be free from interference, coercion, discrimination, or reprisal from the facility when exercising their rights; and (4) be free from abuse and involuntary seclusion. There is no explicit mention of actual or perceived sexual orientation, gender identity, gender expression, or HIV status specifically pertaining to comprehensive care or extended care facilities in regulations or statute.

Civil Penalties

A person who operates a comprehensive care or extended care facility in violation of the rules and regulations adopted by the Secretary of Health is guilty of a misdemeanor and, on conviction, subject to a fine of up to \$1,000. Each day a violation is continued after the first conviction is a separate offense.

The Secretary may impose a civil money penalty of up to \$10,000 for each offense. If a civil money penalty is imposed, the Secretary must issue an order stating the basis on which the order is made, the amount of the civil money penalty imposed, and the manner in which the amount of the civil money penalty was calculated.

Small Business Effect: Comprehensive care and extended care facilities, some of which are small businesses, must comply with the bill's requirements.

Additional Comments: California passed similar legislation in 2017.

Additional Information

Prior Introductions: HB 1010 of 2020 received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Maryland Department of Aging; Maryland Department of Health; Department of Legislative Services

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