

SB 99-2
(LC 2410)
3/16/23 (LHF/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES (at the request of Oregon Association of Area Agencies on Aging and Disabilities)

**PROPOSED AMENDMENTS TO
SENATE BILL 99**

1 Delete lines 4 through 9 of the printed bill and insert:

2

3 **COMMISSION ON LGBTQIA2S+ OLDER ADULTS**

4

5 **SECTION 1. (1) As used in this section, ‘LGBTQIA2S+’ means**
6 **lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two**
7 **Spirit, nonbinary or other minority gender identity or sexual orien-**
8 **tation.**

9 **“(2) The Commission on LGBTQIA2S+ Older Adults is established.**
10 **The legislative intent of the commission is to:**

11 **“(a) Work to improve state agency interactions and communication**
12 **with, and support of, the LGBTQIA2S+ community; and**

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

15 **“(3) The Commission on LGBTQIA2S+ Older Adults consists of 12**
16 **members as follows:**

17 **“(a) The President of the Senate shall appoint one nonvoting**
18 **member from among members of the Senate.**

19 **“(b) The Speaker of the House of Representatives shall appoint one**
20 **nonvoting member from among members of the House of Represen-**
21 **tatives.**

1 “(c) The Director of the Housing and Community Services Depart-
2 ment.

3 “(d) The Governor shall appoint nine members after requesting and
4 considering recommendations from the Department of Human Ser-
5 vices, area agencies, as defined in ORS 410.040, organizations that work
6 with or advocate for LGBTQIA2S+ older adults, organizations that
7 work with or advocate for long term care facilities, as defined in ORS
8 442.015, and other interested organizations with experience in serving
9 older adults.

10 “(4) The members of the commission who are appointed by the
11 Governor must:

12 “(a) Be residents of this state;

13 “(b) Represent the racial, ethnic, geographic, socioeconomic, edu-
14 cational and occupational diversity of this state;

15 “(c) To the greatest extent practicable, be 55 years of age or older
16 or identify as LGBTQIA2S+;

17 “(d) Have knowledge or experience in one or more of the following:

18 “(A) Housing;

19 “(B) Health care;

20 “(C) Long term services and supports;

21 “(D) Dementia;

22 “(E) Human immunodeficiency virus;

23 “(F) Mental health;

24 “(G) Adult protective services;

25 “(H) Elder law, as a member of the Oregon State Bar;

26 “(I) LGBTQIA2S+ education, advocacy, research or public policy;

27 “(J) Racial and ethnic diversity and equity; or

28 “(K) A public or private agency that has experience with or knowl-
29 edge of, or that advocates for the needs of, LGBTQIA2S+ older adults;

30 “(e) Include a majority of at least three members who identify as

1 **LGBTQIA2S+ of whom at least one identifies as transgender;**

2 **“(f) Be supportive of the legislative intent of the commission de-**
3 **scribed in subsection (2) of this section; and**

4 **“(g) Be confirmed by the Senate in the manner prescribed in ORS**
5 **171.562 and 171.565.**

6 **“(5) The term of office of each member of the commission appointed**
7 **by the Governor is four years, but a member serves at the pleasure**
8 **of the Governor. Before the expiration of the term of a member, the**
9 **Governor shall appoint a successor whose term begins on January 1**
10 **next following. A member is eligible for reappointment. If there is a**
11 **vacancy for any cause, the Governor shall make an appointment to**
12 **become immediately effective for the unexpired term.**

13 **“(6) Members of the Legislative Assembly appointed to the com-**
14 **mission are entitled to payment of compensation and expense re-**
15 **imbursement under ORS 171.072, payable from funds appropriated to**
16 **the Legislative Assembly.**

17 **“(7) A member of the commission who is appointed by the Governor**
18 **is entitled to compensation and expenses as provided in ORS 292.495.**

19 **“(8) The commission shall select one of its members as chairperson**
20 **and another as vice chairperson, for terms and with duties and powers**
21 **necessary for the performance of the functions of the offices as the**
22 **commission determines.**

23 **“(9) A majority of the voting members of the commission consti-**
24 **tutes a quorum for the transaction of business.**

25 **“(10) The commission shall meet at times and places specified by**
26 **the call of the chairperson or of a majority of the members of the**
27 **commission. The commission shall meet at least once every three**
28 **months. The commission may also hold fact-finding hearings or other**
29 **public forums as it deems necessary.**

30 **“(11) The commission shall:**

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

3 “(b) Recommend actions by the Governor, the Department of Hu-
4 man Services, other governmental entities or the private sector to
5 address the needs of LGBTQIA2S+ older adults by:

6 “(A) Coordinating programs for LGBTQIA2S+ older adults;

7 “(B) Avoiding unnecessary duplication of services; and

8 “(C) Identifying gaps in the provision of services.

9 “(c) Examine the impact of state policies and rules on
10 LGBTQIA2S+ older adults and make recommendations to ensure
11 equal access to treatment, care and benefits.

12 “(d) Assess the funding and programming needed to provide services
13 to the growing population of LGBTQIA2S+ older adults.

14 “(e) Identify best practices for:

15 “(A) Reducing isolation and preventing abuse and exploitation of,
16 and promoting the independence and self-determination of,
17 LGBTQIA2S+ older adults;

18 “(B) Strengthening caregiving;

19 “(C) Eliminating disparities; and

20 “(D) Improving the quality of life for LGBTQIA2S+ older adults.

21 “(f) Assess whether any policy or practice, or the absence of any
22 policy or practice, promotes the premature admission of LGBTQIA2S+
23 older adults to institutional care.

24 “(g) Make recommendations, if appropriate and necessary, for lower
25 cost and culturally appropriate home- and community-based alterna-
26 tives to institutional care.

27 “(h) Examine strategies for increasing providers’ awareness of the
28 needs of LGBTQIA2S+ older adults and their caregivers and for im-
29 proving the competence of providers in addressing the needs of
30 LGBTQIA2S+ older adults and in improving access to treatment, ser-

1 vices and ongoing care, including preventive care.

2 “(i) Examine the feasibility of developing publicly accessible state-
3 wide training curricula to improve the competency of health care and
4 human services providers in delivering health, housing and long term
5 support services to LGBTQIA2S+ older adults and their caregivers.

6 “(j) Examine outreach protocols to reduce the apprehension of
7 LGBTQIA2S+ older adults in utilizing long term care providers that
8 do not have a particular mission, skill set, training or culture to spe-
9 cifically support LGBTQIA2S+ patients.

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

13 “(13) No later than June 30 of each even-numbered year, the com-
14 mission shall submit a report on the commission’s activities, findings
15 and recommendations, in the manner provided in ORS 192.245, to:

16 “(a) The Governor;

17 “(b) The Department of Human Services;

18 “(c) The Chief Clerk of the House of Representatives;

19 “(d) The Secretary of the Senate; and

20 “(e) The interim committees of the Legislative Assembly related to
21 human services.

22 “(14)(a) The commission shall appoint a director to serve at the
23 pleasure of the commission.

24 “(b) The designation of the director must be by written order, filed
25 with the Secretary of State.

26 “(c) Subject to any applicable provisions of ORS chapter 240, the
27 director shall appoint all subordinate officers and employees of the
28 commission, prescribe their duties and fix their compensation.

29 “(15)(a) The commission may establish any advisory or technical
30 committees the commission considers necessary to aid and advise the

1 commission in the performance of its functions. The committees may
2 be continuing or temporary.

3 “(b) The commission shall determine the representation, member-
4 ship, terms and organization of the committees and shall appoint the
5 members of the committees.

6 “(c) Members of the advisory or technical committees are not en-
7 titled to compensation, but in the discretion of the commission may
8 be reimbursed from funds available to the commission for actual and
9 necessary travel and other expenses reasonably incurred by the com-
10 mittee members in the performance of their official duties in the
11 manner and amount provided in ORS 292.495.

12 “(16)(a) The commission may solicit and receive funds from grants
13 and gifts from any source, public or private, to assist and support the
14 commission’s duties.

15 “(b) All moneys collected or received by the commission shall be
16 paid into the General Fund of the State Treasury and are continuously
17 appropriated for and shall be used by the commission in carrying out
18 the purposes for which the funds are received.

19 “SECTION 2. Notwithstanding the term of office specified by sec-
20 tion 1 of this 2023 Act, of the members first appointed to the Com-
21 mission on LGBTQIA2S+ Older Adults by the Governor:

22 “(1) Three shall serve for terms ending December 31, 2026.

23 “(2) Three shall serve for terms ending December 31, 2027.

24 “(3) Three shall serve for terms ending December 31, 2028.

25

26 “**BILL OF RIGHTS FOR LGBTQIA2S+ OLDER ADULT RESIDENTS**
27 **OF LONG TERM CARE FACILITIES**

28

29 “SECTION 3. Sections 4 to 8 of this 2023 Act are added to and made
30 a part of ORS 441.015 to 441.087.

1 **“SECTION 4. As used in sections 4 to 8 of this 2023 Act:**

2 **“(1) ‘Gender expression’ means an individual’s gender-related ap-**
3 **pearance and behavior, whether or not these are stereotypically asso-**
4 **ciated with the sex the individual was assigned at birth.**

5 **“(2)(a) ‘Gender identity’ means an individual’s internal, deeply held**
6 **knowledge or sense of the individual’s gender, regardless of physical**
7 **appearance, surgical history, genitalia, legal sex, sex assigned at birth**
8 **or name and sex as it appears in medical records or as it is described**
9 **by any other individual, including a family member, conservator or**
10 **legal representative of the individual.**

11 **“(b) ‘Gender identity’ means the gender identity last expressed by**
12 **an individual who lacks the present ability to communicate.**

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

15 **“(4) ‘Gender transition’ means a process by which an individual**
16 **begins to live according to that individual’s gender identity rather**
17 **than the sex the person was assigned at birth. The process may include**
18 **changing the individual’s clothing, appearance, name or identification**
19 **documents or undergoing medical treatments.**

20 **“(5) ‘Harass’ or ‘harassment’ includes:**

21 **“(a) To act in a manner that is unwanted, unwelcomed or unin-**
22 **vited, that demeans, threatens or offends a resident and results in a**
23 **hostile environment for a resident.**

24 **“(b) To require a resident to show identity documents in order to**
25 **gain entrance to a restroom or other area of the facility that is**
26 **available to other individuals of the same gender identity as the resi-**
27 **dent.**

28 **“(6) ‘LGBTQIA2S+’ means lesbian, gay, bisexual, transgender,**
29 **queer, intersex, asexual, Two Spirit, nonbinary or other minority**
30 **gender identity or sexual orientation.**

1 “(7) ‘Long term care facility’ has the meaning given that term in
2 ORS 442.015.

3 “(8) ‘Resident’ means a resident or a patient of a long term care
4 facility.

5 “(9) ‘Sexual orientation’ means romantic or sexual attraction, or a
6 lack of romantic or sexual attraction, to other people.

7 “(10) ‘Staff’ means all of the staff persons who are affiliated with
8 a long term care facility.

9 “(11) ‘Staff person’ means an individual who:

10 “(a) Is employed by a long term care facility;

11 “(b) Contracts with a long term care facility to provide services or
12 supports to the residents; or

13 “(c) Is employed by an entity that contracts with the long term care
14 facility to provide services or supports to the residents.

15 “(12) ‘Transgender’ means having a gender identity or gender ex-
16 pression that differs from the sex one was assigned at birth, regardless
17 of whether one has undergone or is in the process of undergoing
18 gender-affirming care.

19 “SECTION 5. (1) A long term care facility and the facility’s staff
20 shall:

21 “(a) Refer to each resident using the resident’s chosen name and
22 pronoun throughout the course of the resident’s care and in all of the
23 resident’s medical records and resident histories;

24 “(b) Assign each resident to a room in accordance with the
25 resident’s gender identity;

26 “(c) Permit each resident to use any restroom that is open to the
27 resident’s gender identity;

28 “(d) Involve each resident in the resident’s own medical planning
29 and decision-making;

30 “(e) If a power of attorney has not been designated for a resident,

1 permit the resident to:

2 “(A) Designate one or more individuals to instruct the facility about
3 the resident’s medical planning and decision-making if the resident is
4 unable to participate in the resident’s own medical planning and
5 decision-making; and

6 “(B) Place conditions on or limit the extent of the authority of an
7 individual designated under subparagraph (A) of this paragraph;

8 “(f) Permit each resident to restrict or prohibit individuals, without
9 any limitations, from visiting the resident;

10 “(g) Permit each resident to allow individuals identified by the res-
11 ident to have the same access to the resident as the facility allows
12 family members to have access to the resident;

13 “(h) Inform each individual who applies for admission to the facil-
14 ity, in writing, of the basis for any denial of the application for ad-
15 mission and maintain, for a period of at least three years, records
16 related to any decision to deny the application; and

17 “(i) Inform each resident in writing of the basis for each involun-
18 tary transfer, discharge or eviction from the facility that is related to
19 the resident and maintain the records related to the involuntary
20 transfer, discharge or eviction for a period of at least three years.

21 “(2) Except as provided in subsection (3) of this section, a long term
22 care facility and the staff of the facility may not take any of the fol-
23 lowing actions based in whole or in part on a resident’s, visitor’s or
24 staff person’s actual or perceived sexual orientation, gender identity,
25 gender expression or human immunodeficiency virus status:

26 “(a) Deny admission to a long term care facility, transfer or refuse
27 to transfer a resident within a facility or to another facility or dis-
28 charge or evict a resident from a facility;

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

1 “(c) If rooms are assigned by gender, assign, reassign or refuse to
2 assign a room to a transgender or other LGBTQIA2S+ resident other
3 than in accordance with the resident’s gender identity, unless at the
4 request of the resident or if required by federal law;

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

11 “(e) Repeatedly and willfully refuse to use a resident’s chosen name
12 or pronouns after being reasonably informed of the resident’s chosen
13 name or pronouns;

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

17 “(g) Restrict a resident’s right to associate with other residents or
18 with visitors, including the resident’s right to consensual sexual re-
19 lations or to display physical affection, unless the restriction is uni-
20 formly applied to all residents in a nondiscriminatory manner;

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

25 “(i) Fail to accept a resident’s verbal or written attestation of the
26 resident’s gender identity or require a resident to provide proof of the
27 resident’s gender identity using any form of identification;

28 “(j) Fail to take any action, within the long term care facility’s
29 control, to stop discrimination or harassment when the facility knows
30 or should have known about the discrimination or harassment; or

1 “(k) Refuse or willfully fail to provide any service, care or reason-
2 able accommodation to a resident or an applicant for services or care.

3 “(3) A long term care facility may request from the Department of
4 Human Services an exception to a requirement in sections 4 to 8 of
5 this 2023 Act. The department shall prescribe by rule the criteria for
6 granting such exceptions, with input from the Commission on
7 LGBTQIAS+ Older Adults established by section 1 of this 2023 Act.

8 “(4) A long term care facility shall include in its current nondis-
9 crimination policy and in its written materials providing notice of
10 resident rights pursuant to ORS 441.605, and in all places and on all
11 materials where that policy or those written materials are posted, the
12 following notice:

13 “ _____
14 (Name of long term care facility) does not discriminate and does
15 not permit discrimination, including but not limited to bullying, abuse
16 or harassment, based on an individual’s actual or perceived sexual
17 orientation, gender identity, gender expression or human
18 immunodeficiency virus status, or based on an individual’s association
19 with another individual on account of the other individual’s actual or
20 perceived sexual orientation, gender identity, gender expression or
21 human immunodeficiency virus status. If you believe you have experi-
22 enced this kind of discrimination, you may file a complaint with the
23 office of the Long Term Care Ombudsman at _____ (provide current
24 contact information).

25 “ _____
26 “SECTION 6. (1) A long term care facility shall ensure that resident
27 records, including records generated at the time of admission, include
28 the resident’s gender identity and the resident’s chosen name and
29 pronouns, as indicated by the resident.

30 “(2) Unless required by state or federal law, a long term care facility

1 shall not disclose any personally identifiable information regarding:

2 “(a) A resident’s sexual orientation;

3 “(b) Whether a resident is LGBTQIA2S+;

4 “(c) A resident’s gender transition status; or

5 “(d) A resident’s human immunodeficiency virus status.

6 “(3) A long term care facility shall take appropriate steps to mini-
7 mize the likelihood of inadvertent or accidental disclosure of infor-
8 mation described in subsection (2) of this section to other residents,
9 visitors or facility staff, except to the minimum extent necessary for
10 facility staff to perform their duties.

11 “(4) Unless expressly authorized by the resident or the resident’s
12 legal representative, long term care facility staff who are not directly
13 involved in providing direct care to a resident, including but not lim-
14 ited to a LGBTQIA2S+ or gender nonconforming resident, shall not
15 be present during a physical examination of, or the provision of per-
16 sonal care to, the resident if the resident is partially or fully un-
17 clothed. A facility shall use doors, curtains, screens or other effective
18 visual barriers to provide bodily privacy for all residents, including but
19 not limited to LGBTQIA2S+ or gender nonconforming residents,
20 whenever they are partially or fully unclothed.

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

24 “(6) A transgender resident shall be provided access to any assess-
25 ments, therapies and treatments that are recommended by the
26 resident’s health care provider, including but not limited to
27 transgender-related medical care, hormone therapy and supportive
28 counseling.

29 **“SECTION 7. A long term care facility that violates the provisions**
30 **of sections 4 to 8 of this 2023 Act, or that employs a staff member who**

1 violates the provisions of sections 4 to 8 of this 2023 Act, shall be
2 subject to civil penalties or other administrative action as may be
3 provided under ORS 441.705 to 441.745 and rules adopted by the De-
4 partment of Human Services. Sections 4 to 8 of this 2023 Act may not
5 be construed to limit the ability to bring any civil, criminal or ad-
6 ministrative action for conduct constituting a violation of any other
7 provision of law.

8 **“SECTION 8. (1) A long term care facility shall ensure that the**
9 **administrators and staff of the facility receive training, as part of the**
10 **facility’s preservices or continuing education required by law, con-**
11 **cerning:**

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

14 **“(b) Preventing discrimination based on a resident’s sexual orien-**
15 **tation, gender identity, gender expression or human immunodeficiency**
16 **virus status.**

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

19 **“(a) The defined terms commonly associated with LGBTQIA2S+**
20 **individuals and human immunodeficiency virus status;**

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

24 **“(c) A description of the health and social challenges historically**
25 **experienced by LGBTQIA2S+ older adults and older adults living with**
26 **human immunodeficiency virus, including discrimination when seek-**
27 **ing or receiving care at long term care facilities and the demonstrated**
28 **physical and mental health effects within the LGBTQIA2S+ commu-**
29 **nity associated with such discrimination; and**

30 **“(d) Strategies to create a safe and affirming environment for**

1 **LGBTQIA2S+ older adults and older adults living with human**
2 **immunodeficiency virus, including suggested changes to long term**
3 **care facility policies and procedures, forms, signage, communication**
4 **between residents and their families, activities, in-house services and**
5 **staff training.**

6 **“(3) The training required by this section shall be provided by an**
7 **individual or an entity that has demonstrated expertise in identifying**
8 **the legal, social and medical challenges faced by, and creating safe and**
9 **affirming environments for, LGBTQIA2S+ older adults and older**
10 **adults living with human immunodeficiency virus who reside in long**
11 **term care facilities in this state.**

12 **“(4) A long term care facility shall designate two employees, one**
13 **who represents management at the facility and one who represents**
14 **direct care staff at the facility, to receive training described in sub-**
15 **sections (1) and (2) of this section every two years. The designated**
16 **employees shall serve as points of contact for the facility regarding**
17 **compliance with sections 4 to 8 of this 2023 Act and shall develop a**
18 **general training plan for the facility. In the event a designated em-**
19 **ployee ceases to be employed by the facility, the facility shall designate**
20 **another employee, who is representative of the employee group re-**
21 **presented by the former designee and who shall complete the in-person**
22 **training required by subsections (1) and (2) of this section, to serve as**
23 **a point of contact for the facility regarding compliance with sections**
24 **4 to 8 of this 2023 Act and to have joint responsibility for the facility’s**
25 **training plan.**

26 **“(5) Every two years, a long term care facility shall provide to ad-**
27 **ministrators and staff the training described in subsections (1) and (2)**
28 **of this section. Training provided subsequent to the initial training of**
29 **an administrator or staff person must include, at a minimum, re-**
30 **resher courses on the topics described in subsection (2)(b) and (d) of**

1 **this section.**

2 **“(6) A long term care facility shall retain records documenting the**
3 **completion of the training required by subsections (1) and (2) of this**
4 **section by each administrator and staff member at the facility. The**
5 **records shall be made available, upon request, to the Department of**
6 **Human Services and the office of the Long Term Care Ombudsman.**

7 **“(7) A long term care facility is responsible for the cost of the**
8 **training required by this section.**

9 **“SECTION 9. (1) The training described in:**

10 **“(a) Section 8 (1) and (2) of this 2023 Act shall be provided no later**
11 **than 12 months after the effective date of this 2023 Act.**

12 **“(b) Section 8 (4) of this 2023 Act shall first be provided no later**
13 **than six months after the effective date of this 2023 Act.**

14 **“(2) Administrators and staff of a long term care facility hired after**
15 **the effective date of this 2023 Act shall complete the training required**
16 **by section 8 of this 2023 Act within one year after the date of hire,**
17 **unless the individual provides documentation demonstrating that the**
18 **individual has completed equivalent training within the past two**
19 **years.**

20 **“SECTION 10. The Director of Human Services shall adopt rules in**
21 **accordance with ORS chapter 183 as necessary to implement the pro-**
22 **visions of sections 4 to 8 of this 2023 Act.”.**

23
