

Care For LGBTQ Seniors and Seniors with HIV Amendment Act of 2020 Enforcement Guidance 24-03 Date July 18, 2024



Rights and Legal Protections in Long-Term Care Facilities Care for LGBTQ Seniors & Seniors with HIV Amendment Act of 2020 OHR Creating Safer Spaces Unit

About the DC Office of Human Rights (“OHR”)

OHR is charged with enforcing the District’s anti-discrimination laws and its mission is to eradicate discrimination, to increase equal opportunity, and to protect the civil rights of individuals that live in, work in, or visit the District of Columbia. However, there is more to OHR than enforcement. OHR’s holistic approach to achieving its mission includes our commitment to justice, equity, diversity, and inclusion through community engagement, public education, partnerships, and equity programs designed to remove barriers.

Protections for LGBTQ Seniors and Seniors Living with HIV in Long-Term Care Facilities

The “Care for LGBTQ Seniors and Seniors with HIV Amendment Act of 2020” (the “Act”) affords additional protections under the District of Columbia Human Rights Act (“DCHRA”) to LGBTQ residents of long-term care facilities (“residents”) and residents with HIV. The Act became effective on December 23, 2020.

The Act protects residents of long-term care facilities from discrimination and requires staff of long-term care facilities to undergo training on preventing discrimination based on sexual orientation or gender identity or expression when caring for LGBTQ residents and residents with HIV.

OHR Responsibilities:

- Create a list of certified trainers to instruct all staff in long-term care facilities in the District of Columbia about the anti-discrimination rights of LGBTQ seniors and seniors with HIV; ultimately, these trainings will create safer spaces and more affirming environments.
- Verify that posted Notices state that the long-term care facility: a) does not permit discrimination or harassment based on an individual’s actual or perceived sexual orientation, gender identity or expression, or HIV status; and b) outline how to file a claim with OHR.
- Process claims of discrimination based on the protected traits in the District of Columbia.
- For more information, please visit: <https://ohr.dc.gov/page/care-seniors>.

Requirements:

1. **Prohibitions:** Long-term care facilities may not engage in or permit discrimination or harassment against an individual because of their actual or perceived sexual orientation, gender identity or expression, or HIV status.

Some examples of practices that are discriminatory under this provision if based on an individual's actual or perceived sexual orientation, gender identity or expression, or HIV status include:

- i. Denying admission to a long-term care facility.
- ii. Refusing to transfer a resident, or forcibly transferring a resident, to another long-term care facility.
- iii. Discharging or evicting a resident from a long-term care facility.
- iv. Denying a request to share a room with another resident.
- v. Refusing to assign a room in accordance with the resident's gender identity or expression (if rooms are assigned by gender).
- vi. Requiring a resident to show personal identification documentation or to provide evidence of their sex or gender to access a restroom or other sex-segregated facility.
- vii. Knowingly refusing to use a resident's preferred name or pronouns after being clearly informed of the resident's preferred name or pronouns.
- viii. Denying a resident the right to clothing, accessories, or cosmetics, or to engage in grooming practices consistent with the resident's gender identity or expression.
- ix. Denying or restricting association with other residents or visitors, including the consensual expression of intimacy or sexual relations.
- x. Preventing a resident from accessing appropriate medical or nonmedical care in a manner that unreasonably demeans the resident's dignity or causes avoidable discomfort¹.

The law also mandates that long-term care facilities protect residents' privacy during physical examinations and inform residents of their right to refuse an examination, observation, or treatment when the primary purpose is educational or informational instead of a medical need.²

2. **Personal Information:** Long-term care facilities must protect personally identifiable information regarding a resident's sexual orientation, gender identity or expression, transition history, and HIV status from unauthorized disclosure.³

3. **Notice:** Long-term care facilities must post in a conspicuous location in the facility a notice stating that the facility does not permit discrimination or harassment based on an individual's actual or perceived sexual orientation, gender identity or expression, or HIV status. The notice shall include information about a resident's right to file a complaint of discrimination with OHR.⁴

¹ D.C. Code § 2-1402.102.

² *Id.*

³ D.C. Code § 2-1402.103(b).

⁴ D.C. Code § 2-1402.104.

4. **Training Requirements:** Long-term care facilities must train their staff on preventing discrimination based on sexual orientation or gender identity or expression when caring for LGBTQ seniors and seniors with HIV.⁵

What You Should Know About the Training Requirements:

- How often should staff take the training?
 - Staff must receive training at least once every two years.
- Who needs to be trained?
 - All employees and contractors of a long-term care facility.
- When do new staff need to receive training?
 - Within 6 months of hire, unless already trained within the past two years.
- Who provides the training?
 - Certified trainers. Please refer to OHR's website for a current list of trainers certified by OHR under the Act.
- Can staff of long-term care facilities become a certified trainer?
 - Yes.
- What happens after the training?
 - Long-term care facilities must file a report with OHR certifying that all staff have completed the required training. OHR may assess a fine of no more than \$10,000 upon failure to file such a report.
- When is the report due to OHR?
 - Long-term care facilities must submit a report every two years, starting 60 days after OHR first certified a list of trainers. OHR first certified a list of training providers on March 21, 2023. Accordingly, long-term care facilities' first reports are due no later than **May 20, 2025**.
 - Pursuant to OHR's Training Certification Agreement, OHR requires Long Term Care facilities to submit a sign-in sheet or registration link for each training session, and then within 30 business days after the training, submit a certification to OHR that it has completed the training and is in compliance with the Act.
- Will OHR provide a template for the report?
 - Yes.

OHR Responsibilities:

- Create and maintain a list of certified trainers to instruct all staff of long-term care facilities in the District of Columbia about preventing discrimination based on sexual orientation and gender identity or expression when caring for LGBTQ seniors and seniors with HIV.
- Verify that long-term care facilities have posted a notice: (a) stating that the long-term care facility does not permit discrimination or harassment based on an individual's actual or

⁵ D.C. Code § 2-1402.105.

perceived sexual orientation, gender identity or expression, or HIV status; and b) providing information about residents' right to file a claim with OHR.

- Process complaints of discrimination arising under the Act.

How to File a Complaint with OHR

If you believe that a long-term care facility has wrongfully denied or violated any of these rights, you can file a Care for LGBTQ Seniors and Seniors with HIV Complaint Form with OHR at <https://ohr.dc.gov/page/questionnaire-long-term-care-facility-english>.

Alternative to submitting online, you can file a complaint the following ways:

- Email: ohr.intake@dc.gov
- In-Person/Mail: 441 4th Street NW, Suite 570N, Washington, DC 20001
- Fax: (202) 727-9589

Complaints against a private long-term care facility must be filed within one year of the occurrence or discovery of a discriminatory act. Complaints against the District government must be filed with an Equal Employment Opportunity ("EEO") Counselor within 180 days of the occurrence or discovery of a discriminatory act.

Questions about the OHR process can also be answered by phone at (202) 727-4559.

For inquiries regarding the types of complaints OHR adjudicates, email OHR at ohr@dc.gov.

Let's Work Together

As the number of LBGTQ persons and HIV-positive persons aged 50 years and older increases in District and the United States, it is necessary to take appropriate measures to ensure that the needs of this diverse population are met. LGBTQ seniors and seniors with HIV experience greater amounts of chronic stress due to social stigmatization, discrimination, abuse, and neglect.

Providers in long-term care facilities in the District must recognize the positive psychosocial impact of living in a safe environment that promotes the health and well-being of LGBTQ seniors and seniors with HIV. With training and compliance oversight from OHR, long-term care facilities in the District will also contribute to creating safer spaces for all.



We invite you to stand with us and become more involved in defending the rights of all seniors and emphasize protecting LGBTQ seniors and seniors with HIV in the District of Columbia.