

## Adult Foster Home Provider Alert

Policy updates, rule clarifications and announcements

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**Date:** October 11, 2023  
**To:** APD Adult Foster Home Providers  
**From:** Safety, Oversight and Quality Unit  
**Topic:** **Upcoming Rule Advisory Committee Meeting for Senate Bill 99**

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Hello!

You are invited to attend a **Rule Advisory Committee (RAC) to implement Senate Bill 99** on **Thursday, October 26<sup>th</sup>**, from **9 am to noon**. The meeting will be **virtual only**, using Microsoft Teams. Microsoft Teams is an online platform that allows for participation online or by using a telephone.

**Please reply to [lynn.d.beaton@odhs.oregon.gov](mailto:lynn.d.beaton@odhs.oregon.gov) to receive an invitation.** Everyone who responds to this email will receive an invitation and meeting agenda a few days before the meeting. If you have any accessibility needs or questions, please describe them in your response. Since there are many people interested in this topic, we need to know who plans to actively participate as a RAC member, and who will attend and listen to the meeting. Please let us know if you think you will just listen in, or if you would like to be active in the discussion about writing the rules.

SB 99 was passed earlier this year and requires adult foster homes, residential care facilities, assisted living facilities, and nursing facilities to take actions that protect the rights of LGBTQIA2S+, including:

- Adopt a bill of rights protecting LGBTQIA2S+ residents
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APD means Aging and People with Physical Disabilities. APD adult foster homes are licensed to care for adults who are older and adults with physical disabilities.

- Provide staff training about caring for LGBTQIA2S+ residents on topics including:
  - Preventing gender-based discrimination
  - Understanding of the health and social challenges historically experienced by LGBTQIA2S+ residents
- Create procedures to assure resident records accurately reflect the resident's gender identity, chosen name and pronouns, as indicated by the resident

This new legislation also requires the Oregon Department of Human Services create a committee focused on improving state agency interactions and communication with the LGBTQIA2S+ community and creating advocacy opportunities for this population throughout state government.

### **What is the purpose of a rules advisory committee or RAC?**

- Oregon administrative rules (OARs) have the effect of law. When an agency takes rulemaking action the agency is bound by the terms of the rule. The Oregon Department of Human Services (ODHS) is committed to developing rules that foster equity and reduce unintended impacts to people and communities experiencing historical and contemporary injustices and oppression through transparency and engagement. Rule Advisory Committees (RACs) and other forms of engagement with people and communities provide the agencies with the opportunity to receive input from affected communities throughout the rulemaking process.

### **Who will be involved in this RAC meeting?**

- **This meeting is being held only for Adult Foster Home providers and advocates.** SOQ facilitated a meeting for Community-Based Care and Nursing Facility providers and advocates last week. At these first meetings, we are providing background for the legislation, explaining ground rules for participating in the RAC, and describing the different sections of the bill. We are also using these first meetings to introduce

official members of the RAC. Starting in November, we will combine the identified RAC members from both meetings, and continue with a combined, coordinated RAC process.

**How can I participate in the rulemaking process? There are three options available to you:**

1. We are convening an “official” list of the Rule Advisory Committee members. Given the large numbers of people interested in this topic, we need to limit the number of individuals speaking and participating during each meeting. If you are **interested in serving as an official member, please respond to this email, provide your name and indicate you would like to be a RAC member.** We are able to select ten (10) RAC members representing Adult Foster Homes.
2. If you want to join the meeting, **just to listen to the discussion** and monitor the public rule making process, we welcome you. In this case, **please respond to this email, provide your name, and indicate you would like to be a participant.**
3. If you do not want to join the RAC meeting, you are still welcome to participate in writing. You can send an email offering ideas and suggestions on how the rules should be worded to implement the requirements of SB 99.

Thank you for your interest,

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# Enrolled Senate Bill 99

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services, Mental Health and Recovery)

CHAPTER .....

AN ACT

Relating to aging adults; creating new provisions; and amending ORS 410.320.

**Be It Enacted by the People of the State of Oregon:**

## BILL OF RIGHTS FOR LGBTQIA2S+ OLDER ADULT RESIDENTS OF LONG TERM AND COMMUNITY-BASED CARE FACILITIES

**SECTION 1.** Sections 2 to 8 of this 2023 Act are added to and made a part of ORS 441.015 to 441.087.

**SECTION 2.** As used in sections 2 to 8 of this 2023 Act:

(1) "Care facility" includes:

(a) A long term care facility;

(b) A residential care facility, including an assisted living facility, as defined in ORS 443.400; and

(c) An adult foster home, as defined in ORS 443.705.

(2) "Gender expression" means an individual's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the individual was assigned at birth.

(3)(a) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual.

(b) "Gender identity" means the gender identity last expressed by an individual who lacks the present ability to communicate.

(4) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.

(5) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments.

(6) "Harass" or "harassment" includes:

(a) To act in a manner that is unwanted, unwelcomed or uninvited, that demeans, threatens or offends a resident and results in a hostile environment for a resident.

(b) To require a resident to show identity documents in order to gain entrance to a restroom or other area of a care facility that is available to other individuals of the same gender identity as the resident.

(7) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation.

(8) "Resident" means a resident or a patient of a care facility.

(9) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.

(10) "Staff" or "staff person" means one or more individuals who:

(a) Are employed by a care facility to provide services or supports directly to residents;  
or

(b) Contract with or are employed by an entity that contracts with the care facility to provide services or supports directly to residents.

(11) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care.

**SECTION 3.** (1) A care facility and the staff of the facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status:

(a) Deny admission to a care facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility;

(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room;

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

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

(e) Repeatedly and willfully refuse to use a resident's chosen name or pronouns after being reasonably informed of the resident's chosen name or pronouns;

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

(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner;

(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort;

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

(j) Fail to take reasonable actions, within the care facility's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment; or

(k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident or an applicant for services or care.

(2) A care facility shall include in its current nondiscrimination policy and in its written materials providing notice of resident rights pursuant to ORS 441.605, and in all places and on all materials where that policy or those written materials are posted, the following notice:

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(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Department of Human Services at \_\_\_\_\_ (provide current contact information).

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**SECTION 4.** (1) A care facility shall implement procedures regarding resident records generated at the time of admission and during the resident's stay to ensure that the records include the resident's gender identity and the resident's chosen name and pronouns, as indicated by the resident.

(2) Unless required by state or federal law, a care facility shall not disclose any personally identifiable information regarding:

- (a) A resident's sexual orientation;
- (b) Whether a resident is LGBTQIA2S+;
- (c) A resident's gender transition status; or
- (d) A resident's human immunodeficiency virus status.

(3) A care facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (2) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

(4) Informed consent shall be required in relation to any nontherapeutic examination or observation of, or treatment provided to, a resident.

(5) A transgender resident shall be provided access to any assessments, therapies and treatments that are recommended by the resident's health care provider, including but not limited to transgender-related medical care, hormone therapy and supportive counseling.

**SECTION 5.** A care facility that violates the provisions of sections 2 to 8 of this 2023 Act, or that employs a staff member who violates the provisions of sections 2 to 8 of this 2023 Act, shall be subject to civil penalties or other administrative action as may be provided under ORS 441.705 to 441.745 and rules adopted by the Department of Human Services. Sections 2 to 8 of this 2023 Act may not be construed to limit the ability to bring any civil, criminal or administrative action for conduct constituting a violation of any other provision of law.

**SECTION 6.** (1) A care facility shall ensure that the administrators and staff employed by the facility receive training, as part of the facility's preservices or continuing education required by law, concerning:

(a) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus; and

(b) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status.

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

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

(b) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns;

(c) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care at care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination; and

(d) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to care facility policies and procedures, forms, signage, communication between residents and their families, activities, in-house services and staff training.

(3) The Department of Human Services shall establish by rule a process for a care facility to request approval of the training provided by the facility under this section. The department shall approve a training no later than 90 days after the date of request if:

(a) The care facility submits:

(A) A statement of the qualifications and training experience of the individual or entity providing the training;

(B) The proposed methodology for providing the training either online or in person;

(C) An outline of the training; and

(D) Copies of the materials to be used in the training;

(b) The training meets the requirements of subsections (1) and (2) of this section; and

(c) The individual or entity providing the training demonstrates a commitment to advancing quality care for LGBTQIA2S+ residents and residents living with human immunodeficiency virus in this state.

(4) A care facility shall designate two employees, one who represents management at the facility and one who represents direct care staff at the facility, to receive the training described in subsections (1) and (2) of this section within 12 months of being designated and every two years thereafter. The designated employees shall serve as points of contact for the facility regarding compliance with sections 2 to 8 of this 2023 Act and shall develop a general training plan for the facility. In the event a designated employee ceases to be employed by the facility, the facility shall designate another employee, who is representative of the employee group represented by the former designee and who shall complete the training required by subsections (1) and (2) of this section, to serve as a point of contact for the facility regarding compliance with sections 2 to 8 of this 2023 Act and to have joint responsibility for the facility's training plan.

(5) Within 12 months of hiring and every two years thereafter, a care facility shall provide to administrators and staff employed by the facility the training described in subsections (1) and (2) of this section. Training provided subsequent to the initial training of an administrator or staff person employed by the facility must include, at a minimum, refresher courses on the topics described in subsection (2)(b) and (d) of this section.

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

(7) A care facility is responsible for the cost of providing the training required by this section to each administrator and staff person employed by the facility.

**SECTION 7.** (1) An entity that contracts with a care facility to provide services or supports directly to residents of the care facility shall provide to the entity's staff persons who provide the services or supports training meeting the requirements in section 6 (1) and (2) of this 2023 Act. The entity shall provide the training within 12 months of entering into the

contract with the care facility and every two years thereafter. The entity shall provide the training to a newly hired staff person no later than 12 months after hiring.

(2) An individual who contracts with a care facility to provide services or supports directly to residents of the care facility shall complete a training that meets the requirements of section 6 (1) and (2) of this 2023 Act no later than 12 months after entering into a contract with the facility and every two years thereafter.

(3) Training provided subsequent to the initial training of an individual or of a staff person employed by the entity must include, at a minimum, refresher courses on the topics described in section 6 (2)(b) and (d) of this 2023 Act.

(4) The contracting individual or entity shall bear the cost of the training required by this section.

**SECTION 8.** Any requirement in sections 2 to 8 of this 2023 Act may not be applied to a care facility if the requirement is incompatible with:

(1) The professionally reasonable clinical judgment of the management or staff of the care facility; or

(2) A state or federal statute, federal regulation or administrative rule that applies to the care facility.

**SECTION 9.** The Long Term Care Ombudsman, the deputy ombudsmen and their designees shall complete a training meeting the requirements of section 6 (1) and (2) of this 2023 Act within 12 months of appointment and every two years thereafter. Training provided subsequent to the initial training of the Long Term Care Ombudsman, the deputy ombudsmen and their designees must include, at a minimum, refresher courses on the topics described in section 6 (2)(b) and (d) of this 2023 Act.

**SECTION 10.** The Director of Human Services shall adopt rules in accordance with ORS chapter 183 as necessary to implement the provisions of sections 2 to 8 of this 2023 Act.

**SECTION 11.** The training described in:

(1) Section 6 (1) and (2) of this 2023 Act shall first be provided to administrators and staff employed by a care facility, individuals and staff employed by entities that contract with a care facility to provide services or supports directly to residents of the care facility and the Long Term Care Ombudsman, the deputy ombudsmen and their designees no later December 31, 2024.

(2) Section 6 (4) of this 2023 Act shall first be provided no later than July 1, 2024.

#### **LGBTQIA2S+ SUBCOMMITTEE OF THE GOVERNOR'S COMMISSION ON SENIOR SERVICES**

**SECTION 12.** ORS 410.320 is amended to read:

410.320. (1)(a) The Governor's Commission on Senior Services is created. The commission shall consist of at least 21 members appointed by the Governor for terms of three years.

[(2)] (b) Prior to making appointments, the Governor shall request and consider recommendations from the area agencies [*on aging*] and other interested senior organizations. The Governor shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two years with such duties as the Governor shall prescribe. The membership of the commission shall be composed of persons broadly representative of major public and private agencies who are experienced in or have demonstrated particular interest in the special needs of elderly persons, including persons who have been active in organizations and advocates on behalf of elderly persons. Additionally, membership shall include persons who are active in advocacy organizations representing the interests of persons with disabilities who are served in programs under the Department of Human Services and consumers of services provided primarily to elderly persons and persons with disabilities under department programs, including low income persons, minorities and persons with disabilities. At least a majority of members shall be 60 years of age or older.



[3] (c) The Governor's Commission on Senior Services shall advise the Governor and the Director of Human Services on needs of elderly persons, and recommend actions by the Governor, the Department of Human Services, other governmental entities and the private sector, appropriate to meet such needs.

[4] (d) The commission shall have authority to study programs and budgets of all state agencies that affect elderly persons. After such study, the commission shall make recommendations to the Governor and to the agencies involved. Such recommendations shall be designed to provide coordination of programs for elderly persons, to avoid unnecessary duplication in provision of services, and to point out gaps in provision of services. The commission shall also recommend development of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the commission shall coordinate its efforts with other advisory groups within the Department of Human Services to avoid duplication of effort.

[5] (e) The commission shall promote responsible statewide advocacy for elderly persons.

[6] (f) Members of the commission, other than legislators, shall be entitled to compensation and expenses as provided in ORS 292.495.

**(2)(a) The LGBTQIA2S+ subcommittee of the Governor's Commission on Senior Services is established. The intent of the Legislative Assembly in establishing the subcommittee is to:**

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

**(B) Create advocacy opportunities for, and support equity for, LGBTQIA2S+ older adults throughout state government.**

**(b) The purpose of the subcommittee is to advise the Governor and the director or the director's designee on the needs of LGBTQIA2S+ older adults and on how to improve the delivery of services to meet the needs of LGBTQIA2S+ older adults.**

**(c) The Governor shall appoint nine members to the subcommittee after requesting and considering recommendations from the department, area agencies and organizations that serve or represent the LGBTQIA2S+ community.**

**(d) At least five members of the subcommittee must be individuals who identify as LGBTQIA2S+, including at least one member who identifies as transgender.**

**(e) Members appointed to the subcommittee must be supportive of the intent of the Legislative Assembly in establishing the subcommittee.**

**(f) Members of the subcommittee serve for a term of three years and may be reappointed.**

**(g) Members of the subcommittee are not entitled to compensation, but at the discretion of the commission may be reimbursed for actual and necessary travel and other expenses reasonably incurred by the members in the performance of the official duties in the amount and manner provided in ORS 292.495.**

**(h) As used in this section, "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation.**

**SECTION 13. The Governor shall appoint the members of the LGBTQIA2S+ subcommittee of the Governor's Commission on Senior Services no later than September 1, 2024.**

#### CAPTIONS

**SECTION 14. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.**

**Passed by Senate June 20, 2023**

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

**Passed by House June 22, 2023**

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Dan Rayfield, Speaker of House

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

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Secretary of State