

SENATE BILL NO. 364—SENATORS PARKS,
SPEARMAN; AND WOODHOUSE

MARCH 19, 2019

Referred to Committee on Health and Human Services

SUMMARY—Prohibits discrimination against and provides protection for persons who reside in or receive services from certain facilities. (BDR 40-757)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the protection of vulnerable persons; prohibiting a medical facility, facility for the dependent and certain other facilities from engaging in certain discriminatory actions; requiring such facilities to take certain measures to protect the privacy of persons receiving care from the facilities; requiring administrators and employees of such facilities to receive certain training; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the licensing and regulation of medical facilities, facilities for the dependent and certain other facilities by the Division of Public and Behavioral Health of the Department of Health and Human Services. (NRS 449.029-449.240) **Section 2** of this bill prohibits such a facility from discriminating against a person based on the actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the person or a person with whom the person associates. **Section 3** of this bill requires such a facility to ensure that all records maintained by the facility concerning a person refer to the person using the gender identity, name and pronouns preferred by the person and take certain measures to protect the privacy of persons receiving care from the facility. **Section 6** of this bill requires administrators and employees of such facilities to receive training concerning cultural competency and sensitivity in issues relating to the lesbian, gay, bisexual and transgender community. **Sections 4-10** of this bill make conforming changes.

Existing law creates the Office of the State Long-Term Care Ombudsman within the Aging and Disability Services Division of the Department of Health and



Human Services to advocate for the protection of residents of facilities for long-term care and authorizes the Ombudsman to investigate complaints concerning such facilities. (NRS 427A.125, 427A.135) **Section 2** requires a medical facility, a facility for the dependent and certain other facilities required to be licensed by the State Board of Health to post prominently in the facility and include on any marketing website and in any marketing materials: (1) a statement that a person who is discriminated against on prohibited grounds may file a complaint with the Ombudsman; and (2) the contact information for the Ombudsman.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *A medical facility, facility for the dependent or facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed and any employee or independent contractor of such a facility shall not discriminate in the admission of, or the provision of services to, a person based wholly or partially on the actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the person or any person with whom the person associates.*

2. *Prohibited discrimination pursuant to subsection 1 includes, without limitation:*

(a) Denying admission to the facility, transferring or refusing to transfer a person within the facility or to another facility or discharging or evicting a person from the facility.

(b) Denying a request by persons to share a room.

(c) Preventing a person from wearing or being dressed in clothing, accessories or cosmetics that are authorized for any other person.

(d) Restricting a person from associating with other persons, including, without limitation, engaging in consensual sexual relations.

(e) Denying or restricting care that is appropriate for the biology of a person or providing care in a manner that unduly demeans or causes avoidable discomfort to a person.

(f) Harassing or verbally or physically abusing a person.

(g) If rooms are assigned by gender, assigning, reassigning or refusing to assign a room to a transgender person in accordance with the gender identity of the person, except at the request of the person.

(h) Prohibiting a person from using, requiring a person to show documentation before using or otherwise harassing a person



1 *for using or seeking to use a restroom available to other persons of*
2 *the same gender identity.*

3 *(i) Willfully failing to use the preferred name or pronouns of a*
4 *person after the person has informed the facility of his or her*
5 *preferred name or pronouns.*

6 *(j) Willfully refusing to comply with the decisions of the spouse*
7 *or domestic partner of a person who is the authorized*
8 *representative of the person if the decisions are within the scope of*
9 *the authorized representation.*

10 *3. A medical facility, facility for the dependent or facility*
11 *which is otherwise required by regulations adopted by the Board*
12 *pursuant to NRS 449.0303 to be licensed shall post prominently in*
13 *the facility and include on any Internet website and in any*
14 *materials used to market the facility the following statement:*

15
16 *[Name of facility] does not discriminate and does not permit*
17 *discrimination, including, without limitation, bullying,*
18 *abuse or harassment, on the basis of actual or perceived*
19 *race, color, religion, national origin, ancestry, age, gender,*
20 *physical or mental disability, sexual orientation, gender*
21 *identity or expression or HIV status, or based on association*
22 *with another person on account of that person's actual or*
23 *perceived race, color, religion, national origin, ancestry,*
24 *age, gender, physical or mental disability, sexual*
25 *orientation, gender identity or expression or HIV status.*

26
27 *4. In addition to the statement prescribed by subsection 3, a*
28 *facility for skilled nursing, facility for intermediate care or*
29 *residential facility for groups shall post prominently in the facility*
30 *and include on any Internet website and in any materials used to*
31 *market the facility:*

32 *(a) Notice that a person who has experienced prohibited*
33 *discrimination may file a complaint with the Office of the State*
34 *Long-Term Care Ombudsman created by NRS 427A.125; and*

35 *(b) The contact information for the Office of the State Long-*
36 *Term Care Ombudsman.*

37 *5. The provisions of this section shall not be construed to:*

38 *(a) Require a medical facility, facility for the dependent or*
39 *facility which is otherwise required by regulations adopted by the*
40 *Board pursuant to NRS 449.0303 to be licensed or an employee or*
41 *independent contractor thereof to take or refrain from taking any*
42 *action in violation of reasonable medical standards; or*

43 *(b) Prohibit a medical facility, facility for the dependent or*
44 *facility which is otherwise required by regulations adopted by the*
45 *Board pursuant to NRS 449.0303 to be licensed from adopting a*



1 *policy that is applied uniformly and in a nondiscriminatory*
2 *manner, including, without limitation, such a policy that bans or*
3 *restricts sexual relations.*

4 **Sec. 3.** *A medical facility, facility for the dependent or facility*
5 *which is otherwise required by regulations adopted by the Board*
6 *pursuant to NRS 449.0303 to be licensed shall:*

7 *1. Ensure that all records maintained by the facility*
8 *concerning a person refer to the person using the gender identity,*
9 *name and pronouns preferred by the person;*

10 *2. Maintain the confidentiality of personally identifiable*
11 *information concerning the sexual orientation of a person,*
12 *whether the person is transgender or has undergone a gender*
13 *transition and the human immunodeficiency virus status of the*
14 *person and take reasonable actions to prevent the unauthorized*
15 *disclosure of such information;*

16 *3. Prohibit employees or independent contractors of the*
17 *facility who are not performing a physical examination or directly*
18 *providing care to a person from being present during any portion*
19 *of the physical examination or care, as applicable, during which*
20 *the person is fully or partially unclothed without the express*
21 *permission of the person or the authorized representative of the*
22 *person;*

23 *4. Use visual barriers, including, without limitation, doors,*
24 *curtains and screens, to provide privacy for persons who are fully*
25 *or partially unclothed; and*

26 *5. Allow a person to refuse to be examined, observed or*
27 *treated by an employee or independent contractor of the facility*
28 *for a purpose that is primarily educational rather than*
29 *therapeutic.*

30 **Sec. 4.** NRS 449.029 is hereby amended to read as follows:
31 449.029 As used in NRS 449.029 to 449.240, inclusive, *and*
32 *sections 2 and 3 of this act*, unless the context otherwise requires,
33 “medical facility” has the meaning ascribed to it in NRS 449.0151
34 and includes a program of hospice care described in NRS 449.196.

35 **Sec. 5.** NRS 449.0301 is hereby amended to read as follows:
36 449.0301 The provisions of NRS 449.029 to 449.2428,
37 inclusive, *and sections 2 and 3 of this act* do not apply to:

38 *1. Any facility conducted by and for the adherents of any*
39 *church or religious denomination for the purpose of providing*
40 *facilities for the care and treatment of the sick who depend solely*
41 *upon spiritual means through prayer for healing in the practice of*
42 *the religion of the church or denomination, except that such a*
43 *facility shall comply with all regulations relative to sanitation and*
44 *safety applicable to other facilities of a similar category.*

45 *2. Foster homes as defined in NRS 424.014.*



3. Any medical facility, facility for the dependent or facility which is otherwise required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed that is operated and maintained by the United States Government or an agency thereof.

Sec. 6. NRS 449.0302 is hereby amended to read as follows:
449.0302 1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.029 to 449.2428, inclusive, *and sections 2 and 3 of this act* and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

(c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may provide certain care in his or her home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

(d) Regulations establishing a procedure for the indemnification by the Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

(e) *Regulations that prescribe required training for administrators and employees of medical facilities, facilities for the dependent and facilities which are otherwise required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed concerning cultural competency and sensitivity in issues relating to lesbian, gay, bisexual and transgender persons.*

(f) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.029 to 449.2428, inclusive ~~H~~, *and sections 2 and 3 of this act.*

2. The Board shall adopt separate regulations governing the licensing and operation of:

(a) Facilities for the care of adults during the day; and

(b) Residential facilities for groups,

↳ which provide care to persons with Alzheimer's disease.

3. The Board shall adopt separate regulations for:

(a) The licensure of rural hospitals which take into consideration the unique problems of operating such a facility in a rural area.

(b) The licensure of facilities for refractive surgery which take into consideration the unique factors of operating such a facility.



(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. In addition to the training requirements prescribed pursuant to NRS 449.093, the Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:

(a) The ultimate user's physical and mental condition is stable and is following a predictable course.

(b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.

(c) A written plan of care by a physician or registered nurse has been established that:

(1) Addresses possession and assistance in the administration of the medication; and

(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) Except as otherwise authorized by the regulations adopted pursuant to NRS 449.0304, the prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The Board shall not allow the licensing of a facility as a residential facility for groups which provides assisted living services and a residential facility for groups shall not claim that it provides "assisted living services" unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what



1 services of personalized care will be available to the person and the
2 amount that will be charged for those services throughout the
3 resident's stay at the facility.

4 (b) The residents of the facility reside in their own living units
5 which:

6 (1) Except as otherwise provided in subsection 8, contain
7 toilet facilities;

8 (2) Contain a sleeping area or bedroom; and

9 (3) Are shared with another occupant only upon consent of
10 both occupants.

11 (c) The facility provides personalized care to the residents of the
12 facility and the general approach to operating the facility
13 incorporates these core principles:

14 (1) The facility is designed to create a residential
15 environment that actively supports and promotes each resident's
16 quality of life and right to privacy;

17 (2) The facility is committed to offering high-quality
18 supportive services that are developed by the facility in
19 collaboration with the resident to meet the resident's individual
20 needs;

21 (3) The facility provides a variety of creative and innovative
22 services that emphasize the particular needs of each individual
23 resident and the resident's personal choice of lifestyle;

24 (4) The operation of the facility and its interaction with its
25 residents supports, to the maximum extent possible, each resident's
26 need for autonomy and the right to make decisions regarding his or
27 her own life;

28 (5) The operation of the facility is designed to foster a social
29 climate that allows the resident to develop and maintain personal
30 relationships with fellow residents and with persons in the general
31 community;

32 (6) The facility is designed to minimize and is operated in a
33 manner which minimizes the need for its residents to move out of
34 the facility as their respective physical and mental conditions change
35 over time; and

36 (7) The facility is operated in such a manner as to foster a
37 culture that provides a high-quality environment for the residents,
38 their families, the staff, any volunteers and the community at large.

39 8. The Division may grant an exception from the requirement
40 of subparagraph (1) of paragraph (b) of subsection 7 to a facility
41 which is licensed as a residential facility for groups on or before
42 July 1, 2005, and which is authorized to have 10 or fewer beds and
43 was originally constructed as a single-family dwelling if the
44 Division finds that:



(a) Strict application of that requirement would result in economic hardship to the facility requesting the exception; and

(b) The exception, if granted, would not:

(1) Cause substantial detriment to the health or welfare of any resident of the facility;

(2) Result in more than two residents sharing a toilet facility; or

(3) Otherwise impair substantially the purpose of that requirement.

9. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:

(a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;

(b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;

(c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and

(d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.

10. The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:

(a) Facilities that only provide a housing and living environment;

(b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and

(c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

➤ The regulations must provide that if a facility was originally constructed as a single-family dwelling, the facility must not be authorized for more than eight beds.

11. As used in this section, “living unit” means an individual private accommodation designated for a resident within the facility.



Sec. 7. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.029 to 449.2428, inclusive, *and sections 2 and 3 of this act* upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.029 to 449.245, inclusive, *and sections 2 and 3 of this act*, or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.

(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to NRS 449.001 to 449.430, inclusive, *and sections 2 and 3 of this act*, and 449.435 to 449.531, inclusive, and chapter 449A of NRS if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or

(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Division shall maintain a log of any complaints that it receives relating to activities for which the Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Division shall provide to a facility for the care of adults during the day:

(a) A summary of a complaint against the facility if the investigation of the complaint by the Division either substantiates the complaint or is inconclusive;

(b) A report of any investigation conducted with respect to the complaint; and

(c) A report of any disciplinary action taken against the facility.



1 ➡ The facility shall make the information available to the public
2 pursuant to NRS 449.2486.

3 4. On or before February 1 of each odd-numbered year, the
4 Division shall submit to the Director of the Legislative Counsel
5 Bureau a written report setting forth, for the previous biennium:

6 (a) Any complaints included in the log maintained by the
7 Division pursuant to subsection 3; and

8 (b) Any disciplinary actions taken by the Division pursuant to
9 subsection 2.

10 **Sec. 8.** NRS 449.163 is hereby amended to read as follows:

11 449.163 1. In addition to the payment of the amount required
12 by NRS 449.0308, if a medical facility, facility for the dependent or
13 facility which is required by the regulations adopted by the Board
14 pursuant to NRS 449.0303 to be licensed violates any provision
15 related to its licensure, including any provision of NRS 439B.410 or
16 449.029 to 449.2428, inclusive, *and sections 2 and 3 of this act* or
17 any condition, standard or regulation adopted by the Board, the
18 Division, in accordance with the regulations adopted pursuant to
19 NRS 449.165, may:

20 (a) Prohibit the facility from admitting any patient until it
21 determines that the facility has corrected the violation;

22 (b) Limit the occupancy of the facility to the number of beds
23 occupied when the violation occurred, until it determines that the
24 facility has corrected the violation;

25 (c) If the license of the facility limits the occupancy of the
26 facility and the facility has exceeded the approved occupancy,
27 require the facility, at its own expense, to move patients to another
28 facility that is licensed;

29 (d) Impose an administrative penalty of not more than \$5,000
30 per day for each violation, together with interest thereon at a rate not
31 to exceed 10 percent per annum; and

32 (e) Appoint temporary management to oversee the operation of
33 the facility and to ensure the health and safety of the patients of the
34 facility, until:

35 (1) It determines that the facility has corrected the violation
36 and has management which is capable of ensuring continued
37 compliance with the applicable statutes, conditions, standards and
38 regulations; or

39 (2) Improvements are made to correct the violation.

40 2. If the facility fails to pay any administrative penalty imposed
41 pursuant to paragraph (d) of subsection 1, the Division may:

42 (a) Suspend the license of the facility until the administrative
43 penalty is paid; and

44 (b) Collect court costs, reasonable attorney's fees and other
45 costs incurred to collect the administrative penalty.



3. The Division may require any facility that violates any provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, *and sections 2 and 3 of this act* or any condition, standard or regulation adopted by the Board to make any improvements necessary to correct the violation.

4. Any money collected as administrative penalties pursuant to paragraph (d) of subsection 1 must be accounted for separately and used to administer and carry out the provisions of NRS 449.001 to 449.430, inclusive, *and sections 2 and 3 of this act*, 449.435 to 449.530, inclusive, and 449.760 and chapter 449A of NRS to protect the health, safety, well-being and property of the patients and residents of facilities in accordance with applicable state and federal standards or for any other purpose authorized by the Legislature.

Sec. 9. NRS 449.240 is hereby amended to read as follows:

449.240 The district attorney of the county in which the facility is located shall, upon application by the Division, institute and conduct the prosecution of any action for violation of any provisions of NRS 449.029 to 449.245, inclusive ~~§~~, *and sections 2 and 3 of this act*.

Sec. 10. NRS 654.190 is hereby amended to read as follows:

654.190 1. The Board may, after notice and an opportunity for a hearing as required by law, impose an administrative fine of not more than \$10,000 for each violation on, recover reasonable investigative fees and costs incurred from, suspend, revoke, deny the issuance or renewal of or place conditions on the license of, and place on probation or impose any combination of the foregoing on any licensee who:

(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude.

(b) Has obtained his or her license by the use of fraud or deceit.

(c) Violates any of the provisions of this chapter.

(d) Aids or abets any person in the violation of any of the provisions of NRS 449.029 to 449.2428, inclusive, *and sections 2 and 3 of this act* as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups.

(e) Violates any regulation of the Board prescribing additional standards of conduct for licensees, including, without limitation, a code of ethics.

(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the licensee and the patient or resident for the financial or other gain of the licensee.

2. If a licensee requests a hearing pursuant to subsection 1, the Board shall give the licensee written notice of a hearing pursuant to



1 NRS 233B.121 and 241.034. A licensee may waive, in writing, his
2 or her right to attend the hearing.

3 3. The Board may compel the attendance of witnesses or the
4 production of documents or objects by subpoena. The Board may
5 adopt regulations that set forth a procedure pursuant to which the
6 Chair of the Board may issue subpoenas on behalf of the Board.
7 Any person who is subpoenaed pursuant to this subsection may
8 request the Board to modify the terms of the subpoena or grant
9 additional time for compliance.

10 4. An order that imposes discipline and the findings of fact and
11 conclusions of law supporting that order are public records.

12 5. The expiration of a license by operation of law or by order
13 or decision of the Board or a court, or the voluntary surrender of a
14 license, does not deprive the Board of jurisdiction to proceed with
15 any investigation of, or action or disciplinary proceeding against, the
16 licensee or to render a decision suspending or revoking the license.

17 **Sec. 11.** The Division of Public and Behavioral Health of the
18 Department of Health and Human Services shall review and revise
19 the regulations adopted pursuant to chapter 449 of NRS to ensure
20 that those regulations:

21 1. Do not conflict with the requirements of sections 2 and 3 of
22 act concerning prohibited bases for discrimination; and

23 2. Use currently accepted terminology that accounts for and
24 protects the rights of transgender persons and persons who do not
25 identify as either male or female.

26 **Sec. 12.** This act becomes effective:

27 1. Upon passage and approval for the purpose of adopting any
28 regulations and performing any other preparatory administrative
29 tasks that are necessary to carry out the provisions of this act; and

30 2. On January 1, 2020, for all other purposes.

