

LGBT Older Adults: Know Your Rights in New York State Nursing Homes

July 2010

Lesbian, gay, bisexual and transgender (LGBT) older adults have many legal rights while in the care of a nursing home in New York State, including the right to be free from discrimination, neglect and emotional and physical abuse. Below are answers to some frequently asked questions:

Q: Am I protected if someone discriminates against me because of my sexual orientation?

A: YES. In 2003, New York State enacted the Sexual Orientation Non-Discrimination Act (SONDA). SONDA prohibits discrimination on the basis of actual or perceived sexual orientation in various areas including housing and public accommodation.¹

Q: What if I'm discriminated against because someone thinks I'm lesbian, gay or bisexual? Am I protected under SONDA?

A: YES. SONDA protects you from discrimination based on your **actual or perceived** sexual orientation.

Q: Are there laws that I can use if someone discriminates against me because I am transgender?

A: YES. While neither SONDA nor other provisions of New York State law explicitly ban gender-identity discrimination, courts have held that the state's sex and disability discrimination laws may cover people who are treated differently because they are transgender.²

- Also, some communities, including but not limited to Albany, Buffalo, Ithaca, New York City, Rochester, Suffolk County and Tompkins County have enacted local laws specifically

prohibiting discrimination based on gender identity.

Q: My mom has been living with her female partner for many years. Her health has recently deteriorated, and she may need to enter a nursing home. Can a nursing home deny admission to my mom because of her sexual orientation?

A: NO. As a public accommodation, nursing homes cannot deny admission based on sexual orientation. State regulations specify that nursing homes must follow state antidiscrimination laws such as SONDA.

- New York State regulations explicitly prevent discrimination in admission, retention and care of residents on the basis of sexual orientation.³

Q: My friend has lived openly as a gay man for several years. He is temporarily in a nursing home. When I visit, I've noticed that he is more withdrawn and has hidden photographs of loved ones in fear that nursing home staff will discover his sexual orientation. Is the nursing home required to let my friend freely express his identity?

A: YES. Your friend has a legal right to live openly without fear of discrimination by nursing home staff.

- As a public accommodation, nursing homes cannot directly, or indirectly, refuse, withhold or deny accommodations, advantages, facilities or privileges because of a person's actual or perceived sexual orientation.⁴

¹ N.Y. Exec. Law § 296.

² See, e.g., *Rentos v. Oce-Office Sys.*, 1996 WL 737215 (S.D.N.Y. Dec. 24, 1996); *Doe v. Bell*, 194 Misc. 2d 774, (Sup. Ct. N.Y. County 2003).

³ 10 N.Y.C.R.R. 415.26(i)(1)(ix).

⁴ N.Y. Exec. Law § 296(2)(a).

- Nursing homes must ensure that all residents are afforded the right to a dignified existence, self-determination, respect and full recognition of their individuality.⁵
- Nursing homes must protect and promote the rights of each resident, and shall encourage and assist each resident in the fullest possible exercise of these rights.⁶

Q: My friend authorized my visit to the nursing home where she lives. I was denied visitation solely because I am not a family member. Is this allowed?

A: NO. Every nursing home patient has the right to authorize those family members **and other adults** who will be given priority to visit, consistent with the patient’s or resident’s ability to receive visitors.⁷

Q: Do I have a right to visit my domestic partner or same-sex spouse in a nursing home?

A: YES. You have the right to be treated equally under the same rules as other couples. You can’t be denied the right to visit your domestic partner or spouse when such rights are given to spouses and next-of-kin at a hospital, nursing home or health care facility.⁸

Q: When my brother went to visit his partner, the nursing home attendant would not allow them to be alone in the same room together. Do they have a right to privacy during visitation?

A: YES. If a spouse, relative or partner lives outside of the facility, the resident shall be assured privacy for visits.⁹

Q: My sister wants to share a room with her partner in the nursing home where they reside. Are there any laws allowing this arrangement?

⁵ 10 N.Y.C.R.R. 415.3(a).

⁶ *Id.* See also N.Y. Pub. Health Law § 2803-c(3)(a).

⁷ N.Y. Pub. Health Law § 2803-c(3)(o).

⁸ N.Y. Pub. Health Law § 2805-q; See also http://data.lambdalegal.org/in-court/downloads/exec_ny_o_20080514_governer-directive-same-sex-marriage.pdf.

⁹ 10 N.Y.C.R.R. 415.3(f)(3).

A: YES. Each resident has the right to share a room with his or her spouse, relative or partner if the residents live in the same facility and both consent to the arrangement.¹⁰

Q: I am a transgender woman, but my nursing home insists on giving me a male roommate, denies me my choice of clothes, and otherwise treats me like a man. Is there anything I can do to stop this?

A: YES. New York courts have ruled that gender-identity discrimination is prohibited by state law, and that transgender people have a right to the “reasonable accommodation” of dressing in accordance with their gender identity. The degree of protection may vary depending on the circumstances and the location of your nursing home.¹¹

Q: I transitioned from female to male when I was younger, but my nursing home refuses to give me the hormone therapy that I’ve taken for years. Do I have any recourse?

A: YES. A New York court has held that providing gender-transition-related health care (which includes attire respecting an individual’s gender identity) is a reasonable accommodation required under the state disability-discrimination law. You have the right to receive all medically necessary health care.¹²

Q: What consequences are there for nursing homes that violate state laws?

A: Nursing homes risk civil liability and fines if they violate state laws prohibiting discrimination, abuse and neglect of LGBT older adults.

- Nursing home staff **and** individuals under contract to provide patient-care services in such facilities have a legal obligation to report suspected abuse, mistreatment or neglect. Those who fail to report shall be guilty of unprofessional conduct and may be subject to a civil penalty of up to \$10,000.¹³

¹⁰ *Id.*

¹¹ See *Doe v. Bell*, 194 Misc. 2d 774, (Sup. Ct. N.Y. County 2003).

¹² *Id.* See also N.Y. Pub. Health Law § 2803-c(3)(e).

¹³ N.Y. Pub. Health § 2803-d; N.Y. Pub. Health Law § 12.

- Nursing homes can be sued for failing to comply with SONDA and other laws governing health care facilities.
- Nursing homes may be fined up to \$1,000 per day for violating state rules and regulations.¹⁴

Additional Resource

SAGE (Services & Advocacy for Gay, Lesbian, Bisexual and Transgender Elders)

305 7th Avenue, 6th Floor

New York, NY 10001

212-741-2247

www.sageusa.org.

New York State Department of Health 24-hour Nursing Home Complaint Hotline

call 888-201-4563 or

e-mail nhintake@health.state.ny.us

with information of the complaint.

Contact Lambda Legal For Help

You and your loved ones have the right to live free from discrimination and to be treated with dignity and respect while in the care of a nursing home. If you or someone you care about has been discriminated against, or feels threatened or unsafe, because of sexual orientation or gender identity, call Lambda Legal toll-free at 866-542-8336 or 212-809-8585. For additional information about Lambda Legal, see www.lambdalegal.org.

¹⁴ 10 N.Y.C.R.R. 414.1.