

# Transgender woman, 79, can claim Maine nursing home discriminated against her

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By Benjamin Ryan

A 79-year-old woman has reasonable grounds to claim that a Maine assisted-living facility discriminated against her for being transgender when it rejected her as a potential resident, the Maine Human Rights Commission found.

The commission's 3-2 vote on Monday sets in motion a process that could result in a lawsuit being filed against Sunrise Assisted Living in the town of Jonesport on a claim of violating state nondiscrimination law by denying Marie King's application for residency.

King's attorneys say the case has already made legal history as the nation's first known discrimination complaint filed by a transgender person against a long-term care facility.

"This kind of discrimination against transgender people needing long-term care is far from an isolated incident, but it is also plainly illegal," said Karen L. Loewy, senior counsel at Lambda Legal, which is not involved in the case.

Nearly half of U.S. states, including Maine, have laws [explicitly forbidding discrimination based on gender identity](#) in both housing and public accommodation, legal categories that apply to homes caring for the elderly.

In July 2021, a California appellate court struck down a portion of a 2017 state law that made it a misdemeanor for nursing home staff to [deliberately and repeatedly misgender residents](#) or use their former name — known in the trans community as "deadnaming." The court found that this part of the law violated staff members' right to free speech under the First Amendment. The California Supreme Court is reviewing the decision and may ultimately reverse it.

The California law has stood at the vanguard of a nascent movement in Democratic-controlled states to establish explicit legal protections against discrimination for LGBTQ seniors in nursing homes.

In December 2020, a married lesbian couple [settled a 2018 lawsuit](#) in which they accused a St. Louis retirement facility of [discrimination by refusing their application for residency](#) because theirs was not a heterosexual marriage.

That settlement came in the wake of a landmark 2020 U.S. Supreme Court decision, *Bostock v. Clayton*, which established [nationwide protection for LGBTQ people against workplace discrimination](#).

If ever passed by the U.S. Senate, the sweeping [Equality Act](#), which the [House of Representatives passed 224-206 in February 2021](#), largely along party lines, would cement further anti-discrimination protections for LGBTQ people nationwide.

Long-term care homes that are specifically geared to welcome the nation's [more than 1.1 million LGBTQ seniors](#) remain few and far between. But they have begun to crop up across the United States in recent years, including in [Philadelphia](#), New York, Minneapolis, Cleveland, Los Angeles, Chicago, San Francisco and San Diego.

The Williams Institute at the UCLA School of Law estimates that approximately [0.5 percent of U.S. residents over 65 identify as transgender](#), or approximately 217,000 people.

Research indicates that trans seniors are more likely than their cisgender counterparts to require institutionalized care because they tend to have lower incomes, be in poorer health and be more likely have severed ties from family members.

After King was admitted to [Pen Bay Medical Center](#) in Rockport, Maine, in the spring of 2021, a hospital social worker sought to place her in a long-term care facility, given her poor overall health.

According to the legal complaint filed with the state human rights commission in October, an administrator at Sunrise initially told the social worker that there were vacancies.

But after the administrator learned that King is transgender, she allegedly told the social worker that she was rejecting her application because she did not want to place her with a cisgender-woman roommate.

“Long-term care facilities need to understand that they’re going to have lesbian, gay and transgender residents or applicants,” said Chris Erchull, a staff attorney at GLBTQ Legal Advocates & Defenders in Boston, the nonprofit firm representing King.

The human rights commission’s decision, Erchull said, “is a reminder to all assisted-living homes and other long-term care facilities that they have to treat people with respect, compassion and understanding.”

The commission will now attempt to resolve the dispute between King and Sunrise, and barring such a resolution the commission may then file suit against the facility on her behalf.

King’s attorneys also have the option of suing independently of the commission.

Sunrise’s attorney, John K. Hamer, declined to comment.

Contacted through her attorney in January, King stated in an email that she hopes her case “will open doors to a better understanding” of the needs of transgender people.

CORRECTION (March 16, 2022, 7:40 p.m. ET): A previous version of this article misstated the number of LGBTQ seniors in the U.S. There are 1.1 million of them, not 51 million.