



DISABILITY RIGHTS OREGON

January 31, 2019

TO: Senator Floyd Prozanski, Chair
Senate Committee on Judiciary
FR: Bob Joondeph, Executive Director, Disability Rights Oregon
RE: SB 373: DRO supports

Senator Prozanski and Members of the Committee:

Disability Rights Oregon (DRO) is the Protection and Advocacy System for Oregon. It has provided legal-based advocacy services to Oregonians with disabilities since 1977.

DRO supports SB 373 as a reasonable means of encouraging patients who have been placed under the jurisdiction of the Psychiatric Security Review Board (PSRB) to fully participate in treatment their medical and psychiatric needs. It does so by extending the same level of privacy for their medical records that are enjoyed by other Oregonians. DRO believes that everyone benefits if PSRB patients benefit from treatment.

Presently, medical records in the custody of the PSRB are considered “public records” under state law. As public records, they are have limited confidentiality in that they are exempt from disclosure “unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.” ORS 192.355(2)(a)

SB 373 makes two changes to present law. It would extend ORS 192.398 to PSRB patients. This statute sets out confidentiality standards for the medical records of individuals “in the custody or under the lawful supervision of a state agency, a court or a unit of local government” which “contain information about the physical or mental health or psychiatric care or treatment”. These records are to remain confidential “if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy or “interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure.”

SB 373 also specifically exempts the PSRB from public record laws for their patients,



By doing so, the bill would treat these records the same as the medical records of other Oregonians. The policy for that level of confidentiality is set out in ORS 192.553 which is to assure that “the right to have protected health information of the individual safeguarded from unlawful use or disclosure” in accordance with the federal HIPAA law. State and federal law do allow release of otherwise confidential medical records in some instances. ORS 192.567(2) and (3) specifically allow release when “necessary to prevent or lessen a serious threat to the health or safety of any person or the public.” It directs that this disclosure should be made to “only to a person who is reasonably able to prevent or lessen the threat, including the target of the threat.” Section 3 adds:

(3) With respect to an individual who is being treated for a mental illness, the protected health information disclosed under this section may include, to the extent consistent with the health care provider’s professional judgment and standards of ethical conduct:

- (a) The individual’s diagnoses and the treatment recommendations;
- (b) Issues concerning the safety of the individual, including risk factors for suicide, steps that can be taken to make the individual’s home safer, and a safety plan to monitor and support the individual;
- (c) Information about resources that are available in the community to help the individual, such as case management and support groups; and
- (d) The process to ensure that the individual safely transitions to a higher or lower level of care, including an interim safety plan.

(4) Any disclosure of protected health information under this section must be limited to the minimum necessary to accomplish the purpose of the disclosure.

(5) A health care provider is not subject to any civil liability for making a disclosure in accordance with this section.

DRO believes that SB 373 strikes the proper balance between the treatment needs of psychiatric patients and public safety.

Thank you for this opportunity to present testimony in support of SB 373.