

## SENATE AMENDMENTS TO SENATE BILL 97

By COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

April 5

1 Delete lines 5 through 21 of the printed bill and insert:

2 **“SECTION 1.** ORS 443.394 is amended to read:

3 **“443.394. (1)(a) As used in this section, ‘authorized representative’ means an individual**  
4 **who:**

5 **“(A) Is authorized to represent a resident of a residential facility in legal proceedings;**

6 **“(B) Has a power of attorney for a resident; or**

7 **“(C) Is authorized by court order to act on behalf of a resident.**

8 **“(b) ‘Authorized representative’ of a resident does not include an individual accused or**  
9 **suspected of abusing or harming the resident.**

10 **“(2) The Residential Facilities Ombudsman shall establish procedures to maintain the**  
11 **confidentiality of the records and files of residents. The procedures must meet the following re-**  
12 **quirements:**

13 **“[(1)] (a) The ombudsman or a designee may not disclose, except to state agencies or law**  
14 **enforcement, the identity of any resident or individual acting on behalf of a resident without the**  
15 **consent of the resident or the legal representative of the resident.**

16 **“[(2)] (b) The identity of any resident or individual providing information on behalf of the resi-**  
17 **dent shall be confidential. [If a complaint becomes the subject of judicial proceedings, the investigative**  
18 **information held by the ombudsman or the designee shall be disclosed for the purpose of the pro-**  
19 **ceedings if requested by the court.]**

20 **“(3)(a) Except as provided in paragraph (b) of this subsection, the Residential Facilities**  
21 **Ombudsman, designee or staff of the ombudsman may not be compelled to:**

22 **“(A) Testify or to produce documents to any third party, including in any judicial or ad-**  
23 **ministrative proceeding, arising from a complaint concerning a resident received by the**  
24 **ombudsman; or**

25 **“(B) Disclose, through discovery, subpoena or other means of legal compulsion, any**  
26 **memoranda, work product, notes or case file materials in the possession of the ombudsman,**  
27 **designee or staff related to a complaint concerning a resident received by the ombudsman.**

28 **“(b) Except as provided in paragraph (c) of this subsection, the ombudsman, designee or**  
29 **staff of the ombudsman may disclose information arising from a complaint concerning a**  
30 **resident received by the ombudsman if:**

31 **“(A) The ombudsman, designee or staff personally witnessed a felony related to the**  
32 **complaint;**

33 **“(B) The ombudsman, designee or staff receives a complaint of imminent risk of serious**  
34 **harm to one or more residents;**

35 **“(C) Except for records protected or exempt from disclosure by federal or state law, a**

1 resident or the resident's authorized representative requests a copy of the memoranda, work  
2 product, notes or case file materials arising from a complaint alleging harm or abuse against  
3 the resident;

4 "(D) The resident or the resident's authorized representative requests the ombudsman,  
5 designee or staff to authenticate a record contained in the resident's case file;

6 "(E) A law enforcement agency is pursuing a criminal charge arising from or related to  
7 the complaint;

8 "(F) The information is about the general operation of the facilities ombudsman program,  
9 general processes employed by the ombudsman or statistical or other reports about the  
10 program that do not disclose information about an individual complaint; or

11 "(G) A court of competent jurisdiction enters an order compelling the ombudsman to  
12 disclose information after making explicit findings that:

13 "(i) The information is essential to litigating an ongoing criminal or civil matter;

14 "(ii) The information cannot be obtained from any other source; and

15 "(iii) Disclosure of the information will be limited or redacted in such a way as to mini-  
16 mize unnecessary disclosure of confidential information or information that would tend to  
17 identify a confidential complainant.

18 "(e) Records, as defined in ORS 192.515, memoranda, work product, notes, case files or  
19 any other material provided by the ombudsman, designee or staff of the ombudsman by the  
20 system described in ORS 192.517 may not be disclosed by the ombudsman, designee or staff  
21 of the ombudsman and are not subject to discovery, subpoena or other means of legal  
22 compulsion.".

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