

SB 97-1
(LC 497)
3/17/21 (LHF/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

**PROPOSED AMENDMENTS TO
SENATE BILL 97**

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

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

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

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

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

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

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

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

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

18 **“[(2)] (b) The identity of any resident or individual providing information**
19 **on behalf of the resident shall be confidential. *[If a complaint becomes the***
20 ***subject of judicial proceedings, the investigative information held by the om-***
21 ***budsman or the designee shall be disclosed for the purpose of the proceedings***

1 *if requested by the court.]*

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

5 **“(A) Testify or to produce documents to any third party, including**
6 **in any judicial or administrative proceeding, arising from a complaint**
7 **concerning a resident received by the ombudsman; or**

8 **“(B) Disclose, through discovery, subpoena or other means of legal**
9 **compulsion, any memoranda, work product, notes or case file materi-**
10 **als in the possession of the ombudsman, designee or staff related to a**
11 **complaint concerning a resident received by the ombudsman.**

12 **“(b) Except as provided in paragraph (c) of this subsection, the**
13 **ombudsman, designee or staff of the ombudsman may disclose infor-**
14 **mation arising from a complaint concerning a resident received by the**
15 **ombudsman if:**

16 **“(A) The ombudsman, designee or staff personally witnessed a fel-**
17 **ony related to the complaint;**

18 **“(B) The ombudsman, designee or staff receives a complaint of im-**
19 **minent risk of serious harm to one or more residents;**

20 **“(C) Except for records protected or exempt from disclosure by**
21 **federal or state law, a resident or the resident’s authorized represen-**
22 **tative requests a copy of the memoranda, work product, notes or case**
23 **file materials arising from a complaint alleging harm or abuse against**
24 **the resident;**

25 **“(D) The resident or the resident’s authorized representative re-**
26 **quests the ombudsman, designee or staff to authenticate a record**
27 **contained in the resident’s case file;**

28 **“(E) A law enforcement agency is pursuing a criminal charge aris-**
29 **ing from or related to the complaint;**

30 **“(F) The information is about the general operation of the facilities**

1 ombudsman program, general processes employed by the ombudsman
2 or statistical or other reports about the program that do not disclose
3 information about an individual complaint; or

4 “(G) A court of competent jurisdiction enters an order compelling
5 the ombudsman to disclose information after making explicit findings
6 that:

7 “(i) The information is essential to litigating an ongoing criminal
8 or civil matter;

9 “(ii) The information cannot be obtained from any other source;
10 and

11 “(iii) Disclosure of the information will be limited or redacted in
12 such a way as to minimize unnecessary disclosure of confidential in-
13 formation or information that would tend to identify a confidential
14 complainant.

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

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