

SB 239 -1 STAFF MEASURE SUMMARY

Senate Committee On Human Services

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Sub-Referral To: Senate Committee On Judiciary

Meeting Dates: 2/8, 3/15

WHAT THE MEASURE DOES:

Establishes process to determine consent of residents of residential care facility or adult foster home, to individually-based limitations of certain rights upon finding that the resident is incapable of providing or withholding consent. Defines terms.

FISCAL: Minimal Expenditure Impact

REVENUE: No Revenue Impact

ISSUES DISCUSSED:

- Applicable federal regulatory requirements
- Level of need for incapability findings at facilities
- Protection of resident's rights and health
- Appeals of incapability findings
- Possible amendments

EFFECT OF AMENDMENT:

-1 Clarifies provisions. Modifies membership of consent determining committees for a resident of residential care facility or adult foster home. Permits residents to contest incapacity determination in contested case hearing. Clarifies that incapacity determinations for residents of residential care facility or adult foster home cannot be used to cause substantial and irreversible physical impairment. Adds freedom from restraint to enumerated rights subject to limitation procedures. Takes effect 91st day after *sine die*.

BACKGROUND:

Current Oregon law does not provide a mechanism for residential care facilities and adult foster homes to impose individually-based rights limitations without a resident's consent. Individually-based rights can include such things as a resident's free access to food, power to personalize living space, freely permitting visitors, choose roommates, or maintain privacy in a living space. Current law also does not provide for a facility or foster home to impose such limitations when it has been determined that the resident is not capable of actually providing or withholding consent, even when such limitations would be in the resident's best interest.

Senate Bill 239 creates a process to determine consent for a resident of a residential care facility or an adult foster home who has been found incapable of providing or withholding consent to individually-based limitations of certain rights. The measure establishes that a relevant facility can seek a consent determination from a resident's legal guardian, spouse, or other specified family member. If a legal guardian or family member is not available, the facility or foster home can form a committee to determine consent. If a committee cannot be formed or a legal

SB 239 -1 STAFF MEASURE SUMMARY

representative cannot be found in a timely manner to protect the safety of the resident, the facility can impose a temporary, emergency limitation. Senate Bill 239 also requires the resident or legal representative be notified upon a finding of “incapability,” along with the Office of the Long Term Care Ombudsman and the resident’s Medicaid case manager, after imposing an individually-based limitation.

PRELIMINARY