



Oregon's Voice for Long Term Care & Senior Housing

Senate Committee on Human Services

February 8, 2017

SB 239

Chair Gelser, members of the committee, my name is Gwen Dayton, JD, General Counsel and Executive VP of the Oregon Health Care Association. I am testifying today in favor of SB 239.

SB 239 is necessary to ensure compliance with federal law related to individually based limitations in community based care. Federal law provides that residents in community based care are accorded certain rights, such as the right to visitors of their choosing at any time. The law also provides, however, that if a threat to a resident's health and safety or that of others arises and the community has tried more positive, less intrusive interventions to remove the threat, the community may apply a limitation to those rights. Imposition of the limitation requires the consent of the resident.

Some residents, due to the nature of their condition, are incapable of consenting. SB 239 addresses this situation by providing a pathway for designation of a legal representative to make a consent decision or, if a legal representative is not available, establishment of a committee to make the decision. The community is allowed to impose an emergency limitation if neither of these methods provide a consent determination in a sufficiently timely manner to protect the safety of the resident.

While the bill protects resident safety by establishing a method to obtain consent for a limitation intended to protect the resident, it also includes safeguards intended to protect the resident from imposition of a limitation that they would not desire or is not in their best interests. These include:

- Requirement of a finding that the resident is incapable;
- The resident may appeal a finding of incapacity;
- Requirement that a legal representative appointed pursuant to this process make a determination that reflect the representative's understanding of the resident's best interest and what the resident would want;
- Inclusion of the long term care ombudsman and a case manager on the list of individuals who may serve on a committee appointed to make a determination in the absence of a legal representative;
- Allowing for third party review if the committee decision is not unanimous; and
- Limitation on how long an emergency limitation may be imposed.

Thank you for considering our testimony today.