

## SB 239 A STAFF MEASURE SUMMARY

### Senate Committee On Human Services

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**Action Date:** 03/15/17

**Action:** Do pass with amendments. Refer to Judiciary then to Ways and Means by prior reference.  
(Printed A-Eng.)

**Vote:** 5-0-0-0

**Yeas:** 5 - Dembrow, Gelser, Knopp, Monnes Anderson, Olsen

**Fiscal:** Has minimal fiscal impact

**Revenue:** No revenue impact

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#### WHAT THE MEASURE DOES:

Establishes process for residential care facilities and adult foster homes (facility or facilities) to obtain decisions regarding consent to individually based limits on certain rights, on behalf of residents determined to be incapable of consent. Requires facility to seek decision from responsible persons and family members in specified order, or by committee in the absence of such persons. Specifies required and optional committee members. Provides for review of decisions. Permits temporary imposition of limits in the absence of timely decision if necessary to protect safety of residents or others. Prohibits limitations on nutrition, hydration, and assistance eating that is necessary to avoid specified injury. Provides immunity from civil and criminal liability for decision-makers and facilities complying in good faith. Takes effect 91st day after *sine die*.

#### ISSUES DISCUSSED:

- Applicable federal regulatory requirements
- Level of need for incapability findings at facilities
- Protection of residents' rights and health
- Appeals of incapability findings

#### EFFECT OF AMENDMENT:

Refines and clarifies provisions. Modifies membership of committee making decisions regarding consent. Requires notice of existing appeals process be provided to residents and their representatives. Prohibits limiting residents' rights to usual nutrition and hydration and assistance eating, necessary to avoid substantial and irreversible physical impairment of a major bodily function. Adds freedom from restraint to list of residents' rights that may be subject to limitation. Establishes effective date.

#### BACKGROUND:

Oregon law does not provide a mechanism for residential care facilities and adult foster homes to impose limitations on certain rights of residents without the resident's consent. Rights that may be subject to limitation include such things as a resident's freedom to access food, personalize living space, receive visitors, choose roommates, and maintain privacy in their living space. Current law also does not provide for the imposition of limitations even if a resident is determined to be incapable of actually providing or withholding consent, regardless of whether a limitation might be in the resident's best interest.

Senate Bill 239-A creates a process for residential care facilities and adult foster homes (collectively "facility") to obtain decisions regarding consent on behalf of residents determined to be incapable, in order to place individually

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based limits on certain rights. The measure requires the facility to seek consent from a resident's legal guardian or specified family member. If a legal guardian or family member is not available, the facility must form a committee to make decisions regarding consent. If a decision is not obtained in a timely enough manner to protect the safety of the resident or other persons, the facility may impose an emergency limitation for up to 10 days, or up to 30 days with the permission of the Long-Term Care Ombudsman or the resident's Medicaid case manager.

Senate Bill 239-A also provides for review of decisions and requires notice of the contested case process be provided to residents and their representatives in order to appeal. Finally, the measure prohibits limitations on nutrition, hydration and assistance eating, to avoid impairment of major bodily functions; provides immunity from civil and criminal liability for decision-makers and facilities complying in good faith; and requires facilities to notify the Long-Term Care Ombudsman and the resident's Medicaid case manager when an individually based limitation is imposed.