

## SENATE AMENDMENTS TO SENATE BILL 239

By COMMITTEE ON HUMAN SERVICES

March 20

1 On page 1 of the printed bill, line 2, after “limitations” insert “; and prescribing an effective  
2 date”.

3 In line 7, after “facility” insert “licensed to serve seniors and people with physical  
4 disabilities”.

5 Delete lines 26 through 30.

6 On page 2, delete lines 1 through 9 and insert:

7 “(3)(a) If none of the persons identified under subsection (1) of this section are available or can  
8 be reasonably located, the residential care facility shall form a committee as described in this sub-  
9 section to make a determination regarding consent to an individually based limitation on behalf of  
10 the resident.

11 “(b) A determination by the committee under this subsection requires assent by a majority of  
12 the members of the committee.

13 “(c) The committee must include at least three members.

14 “(d) The committee must include at least one of the following:

15 “(A) A representative of the office of the Long Term Care Ombudsman; or

16 “(B) The resident’s Medicaid case manager or the case manager’s designee.

17 “(e) The committee may include the following individuals:

18 “(A) A representative of the residential care facility;

19 “(B) The resident’s attending physician, nurse practitioner or other independent health care  
20 provider; and

21 “(C) A licensed health care provider with knowledge of the resident’s wishes and best  
22 interests.”.

23 In line 10, delete “(a)”.

24 Delete lines 22 through 42 and insert:

25 “(5)(a) If the residential care facility is unable to obtain a determination regarding consent to  
26 an individually based limitation from the legal representative under subsection (2) of this section  
27 or the committee under subsection (3) of this section in a sufficiently timely manner to protect the  
28 safety of the resident or other persons, the residential care facility may impose an individually based  
29 limitation immediately. The residential care facility shall document and make available upon request  
30 the basis for this finding. An emergency individually based limitation imposed under this subsection  
31 must be limited to as short a period as possible to maintain the safety of the resident or other per-  
32 sons. Except as provided in paragraph (b) of this subsection, an emergency individually based limi-  
33 tation may not be imposed for longer than 10 business days from the date on which the individually  
34 based limitation is imposed.

35 “(b) An emergency individually based limitation may be imposed for up to 30 business days with

1 verbal or written permission from the resident’s Medicaid case manager or a representative of the  
2 Long Term Care Ombudsman.

3 “(6)(a) The residential care facility shall provide timely written notice of a finding that the  
4 resident is incapable and of the procedure for appealing the incapacity determination to the resident  
5 and the resident’s legal representative, if a legal representative is identified under subsection (1) of  
6 this section.

7 “(b) If the resident or the resident’s legal representative disagrees with a finding that the resi-  
8 dent is incapable, the resident or the resident’s legal representative may appeal the incapacity de-  
9 termination in a contested case hearing in accordance with ORS chapter 183.”.

10 In line 45, delete “notify” and insert “provide written notification to”.

11 On page 3, delete lines 12 through 17 and insert:

12 “(c) A residential care facility acting in accordance with this section is not subject to civil or  
13 criminal liability or administrative disciplinary action arising from reliance in good faith on the  
14 consent determination made under subsection (1) or (3) of this section or imposition of an emergency  
15 individually based limitation under subsection (5) of this section.”.

16 After line 23, insert:

17 “(10) Notwithstanding subsections (1) and (3) of this section, a residential care facility may not  
18 obtain a decision regarding consent under this section to limit a resident’s right to:

19 “(a) The usual and typical provision of nutrition and hydration that is necessary to ensure that  
20 a resident does not suffer a substantial and irreversible physical impairment of a major bodily  
21 function; or

22 “(b) Assistance with eating, including but not limited to the provision of nutrition and hydration  
23 by cup, hand, bottle, drinking straw or eating utensil, that is necessary to ensure that a resident  
24 does not suffer a substantial and irreversible physical impairment of a major bodily function.”.

25 In line 24, delete “(10)” and insert “(11)”.

26 In line 29, before “opinion” insert “independent, professional”.

27 In line 30, delete “or licensed physician assistant” and insert “, licensed physician assistant or  
28 registered nurse who is not an administrator of the residential care facility and”.

29 Delete lines 35 through 45 and insert:

30 “(c) ‘Individually based limitation’ means a limitation to the resident’s right to:

31 “(A) Privacy in the resident’s sleeping or living unit, including:

32 “(i) A unit with an entrance door that the resident can lock and to which only appropriate staff  
33 have keys;

34 “(ii) A choice of roommates if the resident shares a unit with another resident; and

35 “(iii) The freedom to furnish and decorate the unit in accordance with the lease or other  
36 agreement;

37 “(B) Freedom and support to control the resident’s schedule and activities;

38 “(C) Access to food at any time;

39 “(D) Have visitors of the resident’s choosing at any time; and

40 “(E) Freedom from restraint.

41 “(d) ‘Safety’ means freedom from a significant risk of harm.”.

42 On page 4, line 3, after “home” insert “licensed to serve seniors and people with physical disa-  
43 bilities”.

44 Delete lines 22 through 35 and insert:

45 “(3)(a) If none of the persons identified under subsection (1) of this section are available or can

1 be reasonably located, the adult foster home shall form a committee as described in this subsection  
2 to make a determination regarding consent to an individually based limitation on behalf of the res-  
3 ident.

4 “(b) A determination by the committee under this subsection requires assent by a majority of  
5 the members of the committee.

6 “(c) The committee must include at least three members.

7 “(d) The committee must include at least one of the following:

8 “(A) A representative of the office of the Long Term Care Ombudsman; or

9 “(B) The resident’s Medicaid case manager or the case manager’s designee.

10 “(e) The committee may include the following individuals:

11 “(A) A representative of the adult foster home;

12 “(B) The resident’s attending physician, nurse practitioner or other independent health care  
13 provider; and

14 “(C) A licensed health care provider with knowledge of the resident’s wishes and best  
15 interests.”.

16 In line 36, delete “(a)”.

17 On page 5, delete lines 3 through 23 and insert:

18 “(5)(a) If the adult foster home is unable to obtain a determination regarding consent to an in-  
19 dividually based limitation from the legal representative under subsection (2) of this section or the  
20 committee under subsection (3) of this section in a sufficiently timely manner to protect the safety  
21 of the resident or other persons, the adult foster home may impose an individually based limitation  
22 immediately. The adult foster home shall document and make available upon request the basis for  
23 this finding. An emergency individually based limitation imposed under this subsection must be  
24 limited to as short a period as possible to maintain the safety of the resident or other persons. Ex-  
25 cept as provided in paragraph (b) of this subsection, an emergency individually based limitation may  
26 not be imposed for longer than 10 business days from the date on which the individually based lim-  
27 itation is imposed.

28 “(b) An emergency individually based limitation may be imposed for up to 30 business days with  
29 verbal or written permission from the resident’s Medicaid case manager or a representative of the  
30 Long Term Care Ombudsman.

31 “(6)(a) The adult foster home shall provide timely written notice of a finding that the resident  
32 is incapable and of the procedure for appealing the incapacity determination to the resident and the  
33 resident’s legal representative, if a legal representative is identified under subsection (1) of this  
34 section.

35 “(b) If the resident or the resident’s legal representative disagrees with a finding that the resi-  
36 dent is incapable, the resident or the resident’s legal representative may appeal the incapacity de-  
37 termination in a contested case hearing in accordance with ORS chapter 183.”.

38 In line 26, delete “notify” and insert “provide written notification to”.

39 Delete lines 37 through 42 and insert:

40 “(c) An adult foster home acting in accordance with this section is not subject to civil or  
41 criminal liability or administrative disciplinary action arising from reliance in good faith on the  
42 consent determination made under subsection (1) or (3) of this section or imposition of an emergency  
43 individually based limitation under subsection (5) of this section.”.

44 On page 6, after line 3, insert:

45 “(10) Notwithstanding subsections (1) and (3) of this section, an adult foster home may not ob-

1 tain a decision regarding consent under this section to limit a resident’s right to:

2 “(a) The usual and typical provision of nutrition and hydration that is necessary to ensure that  
3 a resident does not suffer a substantial and irreversible physical impairment of a major bodily  
4 function; or

5 “(b) Assistance with eating, including but not limited to the provision of nutrition and hydration  
6 by cup, hand, bottle, drinking straw or eating utensil, that is necessary to ensure that a resident  
7 does not suffer a substantial and irreversible physical impairment of a major bodily function.”.

8 In line 4, delete “(10)” and insert “(11)”.

9 In line 9, before “opinion” insert “independent, professional”.

10 In line 10, delete “or licensed physician assistant” and insert “, licensed physician assistant or  
11 registered nurse who is not an administrator of the adult foster home and”.

12 Delete lines 15 through 25 and insert:

13 “(c) ‘Individually based limitation’ means a limitation to the resident’s right to:

14 “(A) Privacy in the resident’s sleeping or living unit, including:

15 “(i) A unit with an entrance door that the resident can lock and to which only appropriate staff  
16 have keys;

17 “(ii) A choice of roommates if the resident shares a unit with another resident; and

18 “(iii) The freedom to furnish and decorate the unit in accordance with the lease or other  
19 agreement;

20 “(B) Freedom and support to control the resident’s schedule and activities;

21 “(C) Access to food at any time;

22 “(D) Have visitors of the resident’s choosing at any time; and

23 “(E) Freedom from restraint.

24 “(d) ‘Safety’ means freedom from a significant risk of harm.

25 “**SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
26 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**”.

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