

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO  
SENATE BILL 239**

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

3 In line 7, after “facility” insert “licensed to serve seniors and people with  
4 physical 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  
8 are available or can be reasonably located, the residential care facility shall  
9 form a committee as described in this subsection to make a determination  
10 regarding consent to an individually based limitation on behalf of the resi-  
11 dent.

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

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

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

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

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

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

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

1 “(B) The resident’s attending physician, nurse practitioner or other inde-  
2 pendent health care provider; and

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

5 In line 10, delete “(a)”.

6 Delete lines 22 through 42 and insert:

7 “(5)(a) If the residential care facility is unable to obtain a determination  
8 regarding consent to an individually based limitation from the legal repre-  
9 sentative under subsection (2) of this section or the committee under sub-  
10 section (3) of this section in a sufficiently timely manner to protect the  
11 safety of the resident or other persons, the residential care facility may im-  
12 pose an individually based limitation immediately. The residential care fa-  
13 cility shall document and make available upon request the basis for this  
14 finding. An emergency individually based limitation imposed under this sub-  
15 section must be limited to as short a period as possible to maintain the  
16 safety of the resident or other persons. Except as provided in paragraph (b)  
17 of this subsection, an emergency individually based limitation may not be  
18 imposed for longer than 10 business days from the date on which the indi-  
19 vidually based limitation is imposed.

20 “(b) An emergency individually based limitation may be imposed for up  
21 to 30 business days with verbal or written permission from the resident’s  
22 Medicaid case manager or a representative of the Long Term Care Ombuds-  
23 man.

24 “(6)(a) The residential care facility shall provide timely written notice of  
25 a finding that the resident is incapable and of the procedure for appealing  
26 the incapacity determination to the resident and the resident’s legal repre-  
27 sentative, if a legal representative is identified under subsection (1) of this  
28 section.

29 “(b) If the resident or the resident’s legal representative disagrees with  
30 a finding that the resident is incapable, the resident or the resident’s legal

1 representative may appeal the incapacity determination in a contested case  
2 hearing in accordance with ORS chapter 183.”.

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

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

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

10 After line 23, insert:

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

14 “(a) The usual and typical provision of nutrition and hydration that is  
15 necessary to ensure that a resident does not suffer a substantial and irre-  
16 versible physical impairment of a major bodily function; or

17 “(b) Assistance with eating, including but not limited to the provision of  
18 nutrition and hydration by cup, hand, bottle, drinking straw or eating  
19 utensil, that is necessary to ensure that a resident does not suffer a sub-  
20 stantial and irreversible physical impairment of a major bodily function.”.

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

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

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

26 Delete lines 35 through 45 and insert:

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

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

30 “(i) A unit with an entrance door that the resident can lock and to which

1 only appropriate staff have keys.

2 “(ii) A choice of roommates if the resident shares a unit with another  
3 resident.

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

6 “(B) Freedom and support to control the resident’s schedule and activ-  
7 ities;

8 “(C) Access to food at any time;

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

10 “(E) Freedom from restraint.

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

12 On page 4, line 3, after “home” insert “licensed to serve seniors and peo-  
13 ple with physical disabilities”.

14 Delete lines 22 through 35 and insert:

15 “(3)(a) If none of the persons identified under subsection (1) of this section  
16 are available or can be reasonably located, the adult foster home shall form  
17 a committee as described in this subsection to make a determination re-  
18 garding consent to an individually based limitation on behalf of the resident.

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

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

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

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

24 or

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

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

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

29 “(B) The resident’s attending physician, nurse practitioner or other inde-  
30 pendent health care provider; and

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

3 In line 36, delete “(a)”.

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

5 “(5)(a) If the adult foster home is unable to obtain a determination re-  
6 garding consent to an individually based limitation from the legal represen-  
7 tative under subsection (2) of this section or the committee under subsection  
8 (3) of this section in a sufficiently timely manner to protect the safety of the  
9 resident or other persons, the adult foster home may impose an individually  
10 based limitation immediately. The adult foster home shall document and  
11 make available upon request the basis for this finding. An emergency indi-  
12 vidually based limitation imposed under this subsection must be limited to  
13 as short a period as possible to maintain the safety of the resident or other  
14 persons. Except as provided in paragraph (b) of this subsection, an emergency  
15 individually based limitation may not be imposed for longer than 10 business  
16 days from the date on which the individually based limitation is imposed.

17 “(b) An emergency individually based limitation may be imposed for up  
18 to 30 business days with verbal or written permission from the resident’s  
19 Medicaid case manager or a representative of the Long Term Care Ombuds-  
20 man.

21 “(6)(a) The adult foster home shall provide timely written notice of a  
22 finding that the resident is incapable and of the procedure for appealing the  
23 incapacity determination to the resident and the resident’s legal represen-  
24 tative, if a legal representative is identified under subsection (1) of this sec-  
25 tion.

26 “(b) If the resident or the resident’s legal representative disagrees with  
27 a finding that the resident is incapable, the resident or the resident’s legal  
28 representative may appeal the incapacity determination in a contested case  
29 hearing in accordance with ORS chapter 183.”

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

1 Delete lines 37 through 42 and insert:

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

7 On page 6, after line 3, insert:

8 “(10) Notwithstanding subsections (1) and (3) of this section, an adult  
9 foster home may not obtain a decision regarding consent under this section  
10 to limit a resident’s right to:

11 “(a) The usual and typical provision of nutrition and hydration that is  
12 necessary to ensure that a resident does not suffer a substantial and irre-  
13 versible physical impairment of a major bodily function; or

14 “(b) Assistance with eating, including but not limited to the provision of  
15 nutrition and hydration by cup, hand, bottle, drinking straw or eating  
16 utensil, that is necessary to ensure that a resident does not suffer a sub-  
17 stantial and irreversible physical impairment of a major bodily function.”.

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

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

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

23 Delete lines 15 through 25 and insert:

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

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

27 “(i) A unit with an entrance door that the resident can lock and to which  
28 only appropriate staff have keys.

29 “(ii) A choice of roommates if the resident shares a unit with another  
30 resident.

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

3       “(B) Freedom and support to control the resident’s schedule and activ-  
4 ities;

5       “(C) Access to food at any time;

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

7       “(E) Freedom from restraint.

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

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

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