



OREGON HEALTH  
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*Oregon's Voice for Long Term Care & Senior Housing*

March 7, 2019

To: Chair Gelser, Vice-Chair Heard, members of the committee

From: Gwen Dayton, Executive Vice President and General Counsel

Re: Testimony on Senate Bill 917

Thank you for the opportunity to submit testimony regarding **Senate Bill 917**. We support Oregon's legal protections for employees who report abuse to the proper state agencies. This bill, as currently written, is overly broad and consequently appears to conflict with federal privacy laws and state resident right protections. Additionally, Oregon already has anti-retaliation protections for employees who report violations of state law.

SB 917 prohibits a nursing facility, residential care facility or assisted living facility ("senior care facility"), as well as other entities, from preventing an employee, prospective employee or volunteer from disclosing resident treatment information to the long term care ombudsman, a regulatory agency, law enforcement and others.

Federal Health Insurance Portability and Accountability Act (HIPAA):

HIPAA and parallel state law establish the minimum protections that apply to disclosures of protected health information; states cannot adopt laws that allow greater disclosure than HIPAA allows. SB 917 would require a senior care facility to allow disclosures that HIPAA might prohibit. For example, the bill would require a facility to allow any disclosure of any aspect of treatment of a resident to any entity with legal or regulatory authority over the facility, regardless of the nature of the oversight, or to someone who is "acting on behalf of" the resident, with no restrictions. HIPAA would allow those disclosures in some circumstances, such as pursuant to a complaint process or if a regulatory agency has requested it as part of its health care oversight function, or to a family member involved in the resident's care as necessary for that care, but does not allow unlimited disclosure. SB 917 does not acknowledge or recognize these limitations.

State Privacy Protections:

State law requires medical record confidentiality as a resident right. For example, OAR 411-054-0027, applying to residential care facilities and assisted living facilities, provides that residents have the right "to have medical and other records kept confidential except as otherwise provided by law." OAR 411-085-0310 says residents in a nursing facility have the right to "have clinical and personal record kept confidential." SB 917 would remove these rights.

Further, while the long-term care ombudsman has access to resident records generally, state law (ORS 441.408) requires the long-term care ombudsman to obtain resident authorization before obtaining the resident's medical records for use in an investigation. SB 917 would circumvent this law by allowing an employee/volunteer to disclose resident health information to the ombudsman to use in an investigation without the authorization the ombudsman him or herself must obtain to receive that same information.

The bill also prevents care facilities from training employees/volunteers not to disclose information concerning the treatment of a resident in the facility. Facilities provide training on HIPAA and resident rights related to confidentiality that is essential to resident privacy. The broad provision in the bill would prohibit this training.

Retaliation already prohibited:

ORS 659A.199 already makes it an unlawful employment practice for an employer to retaliate against an employee for reporting information that the employee believes is evidence of a violation of state or federal law, rule or regulation. As such, the transparency encouraged by SB 917 is already supported in state law.