

SB 97 A STAFF MEASURE SUMMARY

Carrier: Sen. Lieber

Senate Committee On Human Services, Mental Health and Recovery**Action Date:** 03/23/21**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 4-0-1-0**Yeas:** 4 - Anderson, Gelser, Lieber, Taylor**Exc:** 1 - Robinson**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** C. Ross, Counsel**Meeting Dates:** 3/2, 3/23**WHAT THE MEASURE DOES:**

Prohibits compelled testimony or documents from the Residential Facilities Ombudsman's office in administrative or judicial proceedings arising from complaints made to the office concerning residents. Deems all records related to complaints are not subject to discovery or other legal production. Allows disclosure in limited circumstances, such as: when ombuds personnel witness a felony; when a complaint alleges imminent risk of serious harm; when requested by a resident or their authorized representative; when a resident or their authorized representative requests authentication; when law enforcement investigates criminal conduct; when records pertain to general facility operations or ombuds programs; and upon receipt of a court order containing required findings.

ISSUES DISCUSSED:

- Uniquely complex circumstances for populations in residential care
- Existing barriers to access help, especially for those with intellectual or developmental disabilities; fear of immediate repercussions
- Sensitivity and intimacy of each resident's personal information or issues that may be revealed
- Protecting each resident's close circle of trusted support personnel
- Ensuring against barriers to investigation and prosecution of bad actors

EFFECT OF AMENDMENT:

Specifies that the prohibition applies to materials related to complaints concerning residents. Creates exceptions to allow disclosure under certain circumstances (except disclosure of materials provided to the ombuds office by other agents of the system designed to protect individuals with disabilities or mental health challenges), including: when ombuds personnel witness a felony; when a complaint alleges imminent risk of serious harm; when requested by a resident or their authorized representative unless otherwise prohibited; when a resident or their authorized representative requests authentication; when law enforcement investigates criminal conduct; when records pertain to facility operations generally, or ombuds programs or processes, and not individuals; and upon receipt of a court order containing specified findings. Makes other refinements. Defines "authorized representative."

BACKGROUND:

The Residential Facilities Ombudsman (RFO) program is one of three programs within the office of the Long Term Care Ombudsman. It responds to requests for assistance and advocates on behalf of intellectually and/or developmentally disabled individuals and those with mental health challenges who reside in licensed care facilities or homes; in confidence, at no cost. Currently, ombuds personnel may only disclose the identity of complainants or their legal representatives with their consent, and only to state agencies or law enforcement; and information about complaints may only be disclosed in the course of judicial proceedings at the request of the court.

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Senate Bill 97 A exempts RFO program personnel and documents from compelled testimony or production, in judicial or administrative proceedings arising from complaints concerning residents, with some exceptions.