

Enrolled Senate Bill 97

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CHAPTER

AN ACT

Relating to confidentiality of complaints to the office of the Long Term Care Ombudsman; amending ORS 443.394.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 443.394 is amended to read:

443.394. (1)(a) As used in this section, “authorized representative” means an individual who:

- (A) Is authorized to represent a resident of a residential facility in legal proceedings;**
- (B) Has a power of attorney for a resident; or**
- (C) Is authorized by court order to act on behalf of a resident.**

(b) “Authorized representative” of a resident does not include an individual accused or suspected of abusing or harming the resident.

(2) The Residential Facilities Ombudsman shall establish procedures to maintain the confidentiality of the records and files of residents. The procedures must meet the following requirements:

[(1)] (a) The ombudsman or a designee may not disclose, except to state agencies or law enforcement, the identity of any resident or individual acting on behalf of a resident without the consent of the resident or the legal representative of the resident.

[(2)] (b) The identity of any resident or individual providing information on behalf of the resident shall be confidential. *[If a complaint becomes the subject of judicial proceedings, the investigative information held by the ombudsman or the designee shall be disclosed for the purpose of the proceedings if requested by the court.]*

(3)(a) Except as provided in paragraph (b) of this subsection, the Residential Facilities Ombudsman, designee or staff of the ombudsman may not be compelled to:

(A) Testify or to produce documents to any third party, including in any judicial or administrative proceeding, arising from a complaint concerning a resident received by the ombudsman; or

(B) Disclose, through discovery, subpoena or other means of legal compulsion, any memoranda, work product, notes or case file materials in the possession of the ombudsman, designee or staff related to a complaint concerning a resident received by the ombudsman.

(b) Except as provided in paragraph (c) of this subsection, the ombudsman, designee or staff of the ombudsman may disclose information arising from a complaint concerning a resident received by the ombudsman if:

(A) The ombudsman, designee or staff personally witnessed a felony related to the complaint;

(B) The ombudsman, designee or staff receives a complaint of imminent risk of serious harm to one or more residents;

(C) Except for records protected or exempt from disclosure by federal or state law, a resident or the resident's authorized representative requests a copy of the memoranda, work product, notes or case file materials arising from a complaint alleging harm or abuse against the resident;

(D) The resident or the resident's authorized representative requests the ombudsman, designee or staff to authenticate a record contained in the resident's case file;

(E) A law enforcement agency is pursuing a criminal charge arising from or related to the complaint;

(F) The information is about the general operation of the facilities ombudsman program, general processes employed by the ombudsman or statistical or other reports about the program that do not disclose information about an individual complaint; or

(G) A court of competent jurisdiction enters an order compelling the ombudsman to disclose information after making explicit findings that:

(i) The information is essential to litigating an ongoing criminal or civil matter;

(ii) The information cannot be obtained from any other source; and

(iii) Disclosure of the information will be limited or redacted in such a way as to minimize unnecessary disclosure of confidential information or information that would tend to identify a confidential complainant.

(c) Records, as defined in ORS 192.515, memoranda, work product, notes, case files or any other material provided by the ombudsman, designee or staff of the ombudsman by the system described in ORS 192.517 may not be disclosed by the ombudsman, designee or staff of the ombudsman and are not subject to discovery, subpoena or other means of legal compulsion.

Passed by Senate April 8, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 2, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State