

SENATE AMENDMENTS TO SENATE BILL 360

By COMMITTEE ON HEALTH POLICY AND PUBLIC AFFAIRS

April 30

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages 2 and 3 and insert:

2 **“SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS**
3 **chapter 414.**

4 **“SECTION 2. As used in sections 2 to 6 of this 2007 Act:**

5 **“(1) ‘Action’ means:**

6 **“(a) A determination of a member’s eligibility or continuing eligibility for an Oregon**
7 **Health Plan benefit;**

8 **“(b) An administrator’s treatment of a member or another person acting on behalf of the**
9 **member in according dignity and respect; or**

10 **“(c) An administrator’s explanation of the basis for a determination of eligibility or con-**
11 **tinuing eligibility.**

12 **“(2) ‘Administrator’ means any employee or agent of the Department of Human Services**
13 **or of a fully capitated health plan or a prepaid managed care health services organization**
14 **that contracts with the department to provide services under the Oregon Health Plan.**

15 **“(3) ‘Complaint’ means any expression of disagreement made by or on behalf of a member**
16 **regarding an action of an administrator in administering Oregon Health Plan benefits.**

17 **“(4) ‘Elderly or disabled’ means eligible for federal Supplemental Security Income benefits**
18 **or Oregon Supplemental Income Program benefits under ORS 411.706.**

19 **“(5) ‘Fully capitated health plan’ has the meaning given that term in ORS 414.736.**

20 **“(6) ‘Member’ means an elderly or disabled recipient of Oregon Health Plan benefits.**

21 **“(7) ‘Oregon Health Plan’ means medical assistance provided pursuant to ORS chapter**
22 **414.**

23 **“(8) ‘Prepaid managed care health services organization’ has the meaning given that**
24 **term in ORS 414.736.**

25 **“SECTION 3. (1) The Office of the Health Care Ombudsman is established. The office**
26 **shall operate independently of the Department of Human Services. The department, including**
27 **the Governor’s Advocacy Office within the department, shall refer complaints requiring fur-**
28 **ther investigation to the office.**

29 **“(2) The office shall maintain a state toll-free telephone line to accept and record:**

30 **“(a) Complaints regarding the actions and conduct of an administrator that affect a**
31 **member.**

32 **“(b) Complaints concerning access to, quality of or limitations on the care or services**
33 **being provided by an administrator to a member.**

34 **“SECTION 4. (1) The Office of the Health Care Ombudsman is under the supervision and**
35 **control of a Health Care Ombudsman, who is responsible for the performance of the duties,**

1 functions and powers of the office.

2 “(2) The Governor shall appoint the ombudsman, who holds office at the pleasure of the
3 Governor.

4 “(3) The ombudsman shall be paid a salary as provided by law or, if not so provided, as
5 prescribed by the Governor.

6 “(4) The ombudsman shall:

7 “(a) Investigate and resolve complaints received under section 3 of this 2007 Act that are
8 made by or for members, by:

9 “(A) Issuing recommendations regarding further action; and

10 “(B) Attempting to facilitate a settlement of the complaint in a manner acceptable to
11 both the member and the administrator.

12 “(b) Serve as an advocate for a member whenever the member or a physician or other
13 person serving the member is concerned about access to, quality of or limitations on the care
14 or services being provided to the member by an administrator.

15 “(c) Ensure that members are informed of the availability of health care ombudsman
16 services.

17 “(5) The ombudsman shall report quarterly to the Governor. The report shall be avail-
18 able to the public and shall include but not be limited to:

19 “(a) A summary of each complaint recorded by the office and identification of the ad-
20 ministrator against whom the complaint was made;

21 “(b) A summary of the services provided by the office with respect to each complaint;
22 and

23 “(c) Recommendations for modifications to the contracts between the department and
24 fully capitated health plans or prepaid managed care health services organizations to provide
25 care or services to members under the Oregon Health Plan.

26 “(6) In conducting an investigation, the ombudsman shall have the power to issue
27 subpoenas, compel testimony and command the production of documents.

28 “(7) The ombudsman may hire staff to carry out the duties, functions and powers of the
29 office. However, to the maximum extent possible consistent with the proper performance of
30 the duties of the office, the ombudsman shall employ unpaid volunteers to carry out such
31 duties, functions and powers.

32 “(8) The ombudsman, any agent or designee of the ombudsman and any immediate family
33 member of the ombudsman shall be free of any conflict of interest. As used in this sub-
34 section, ‘conflict of interest’ means any present employment by or agency relationship with
35 a fully capitated health plan, a prepaid managed care health services organization or the
36 department, any present financial interest in such entities, any fiduciary relationship to such
37 entities or any direct involvement in any licensing or certification of such entities.

38 “(9) The ombudsman may adopt rules necessary to carry out the provisions of sections
39 2 to 6 of this 2007 Act.

40 “SECTION 5. (1) All agencies of state government, as defined in ORS 174.111, and fully
41 capitated health plans, prepaid managed care health services organizations and health care
42 providers shall assist the Health Care Ombudsman in the performance of the duties of the
43 office of Health Care Ombudsman and shall furnish such information and advice as the om-
44 budsman considers necessary to perform the duties of the office.

45 “(2) Upon written authorization by a member or the member’s legal representative, any

1 designee of the ombudsman providing proper identification shall have direct access to any
2 member's records held by or within the control of an administrator or a health care provider
3 and shall be entitled without charge to have photocopies of such records. The administrator
4 or health care provider shall provide access to records within five working days of receiving
5 a written request for access that is accompanied by the member's authorization. Except as
6 otherwise provided in this section, nothing in ORS 192.518 to 192.526 shall be interpreted to
7 limit access to records by the ombudsman or the ombudsman's designee.

8 “(3) The Office of the Health Care Ombudsman shall be considered to be a health over-
9 sight agency for purposes of 45 C.F.R. 164.501 and shall have access to records of any ad-
10 ministrator, public agency or health care provider that are necessary for the investigation
11 and resolution of any member complaint.

12 “(4) Except as provided in subsections (1) to (3) of this section, the ombudsman and all
13 agents or designees of the ombudsman shall be subject to the confidentiality provisions of
14 the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and all
15 federal and state rules implementing the Act.

16 “(5) Upon the ombudsman's request, the Department of Human Services shall investigate
17 a complaint about an action taken by a fully capitated health plan or a prepaid managed care
18 health services organization for any possible violations by such entity of the entity's contract
19 with the department or any possible violations of state or federal laws.

20 “(6) As used in subsection (1) of this section, ‘assist’ means to respond promptly to the
21 ombudsman's or designee's oral and written inquiries, to provide complete and accurate re-
22 sponses to the ombudsman's or designee's written or oral questions about the action taken
23 and to engage in a good faith attempt with the ombudsman or designee to resolve the com-
24 plaint to the member's satisfaction.

25 “SECTION 6. A person who files a complaint with the Office of the Health Care Om-
26 budsman under sections 2 to 6 of this 2007 Act or who participates in an investigation under
27 sections 2 to 6 of this 2007 Act may not be, as a result of filing the complaint:

28 “(1) Subject to any penalties, sanctions or restrictions imposed by the Department of
29 Human Services;

30 “(2) Subject to any penalties, sanctions or restrictions connected with the person's em-
31 ployment; or

32 “(3) Denied any right, privilege or benefit by the department, a fully capitated health plan
33 or a prepaid managed care health services organization on account of the complaint.

34 “SECTION 7. All contracts entered into by the Department of Human Services for the
35 purpose of administering the Oregon Health Plan shall include a provision stating that the
36 administrator agrees to comply fully with the provisions of sections 2 to 6 of this 2007 Act.

37 “SECTION 8. This 2007 Act being necessary for the immediate preservation of the public
38 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
39 July 1, 2007.”.