

# Senate Bill 855

Sponsored by COMMITTEE ON HEALTH CARE, HUMAN SERVICES AND RURAL HEALTH POLICY (at the request of United Citizens of Oregon, Oregon State Council for Retired Citizens, Oregon Alliance for Retired Americans, Parkinson's Resources of Oregon)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prescribes process for nominating individuals to serve as Long Term Care Ombudsman. Adds new qualification requirements for ombudsman. Requires consultation with specified persons before removing ombudsman.

Requires ombudsman to provide notice and hearing to local designee prior to removal for violation of contract.

Requires Long Term Care Advisory Committee to allow public comments and to record all public meetings.

## A BILL FOR AN ACT

1  
2 Relating to the Long Term Care Ombudsman Program; creating new provisions; and amending ORS  
3 441.100, 441.103, 441.109, 441.131, 441.142 and 441.147.

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

5 **SECTION 1. Section 2 of this 2011 Act and ORS 441.146 are added to and made a part of**  
6 **ORS 441.100 to 441.153.**

7 **SECTION 2. (1) The Long Term Care Advisory Committee established by ORS 441.137**  
8 **shall appoint a selection committee to identify the three nominees to be considered by the**  
9 **Governor for appointment as the Long Term Care Ombudsman under ORS 441.103. The se-**  
10 **lection committee must include, but is not limited to, at least:**

11 (a) **One advocate for seniors;**

12 (b) **One advocate for persons with disabilities;**

13 (c) **Two volunteer ombudsmen who are not serving on the Long Term Care Advisory**  
14 **Committee; and**

15 (d) **One representative of area agencies, as defined in ORS 410.040.**

16 (2) **The Long Term Care Advisory Committee shall distribute widely the notice of the**  
17 **Long Term Care Ombudsman position and shall post notices:**

18 (a) **In communities that reach out to seniors and persons with disabilities;**

19 (b) **At organizations and agencies that serve seniors or persons with disabilities;**

20 (c) **With advocacy organizations for seniors or persons with disabilities;**

21 (d) **At locations of providers of services to seniors or persons with disabilities;**

22 (e) **At any other location where seniors or persons with disabilities are likely to be**  
23 **present;**

24 (f) **With appropriate media outlets; and**

25 (g) **In publications, on websites or to electronic mail lists that are targeted to populations**  
26 **that include seniors or persons with disabilities.**

27 **SECTION 3. ORS 441.100 is amended to read:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1        441.100. **Notwithstanding ORS 442.015, as used in ORS 441.100 to 441.153:**

2        (1) “Administrative action” means any action or decision made by an owner, employee or agent  
3 of a long term care facility or by a public agency that affects the services to residents.

4        (2) “Committee” means the Long Term Care Advisory Committee.

5        (3) “Designee” means an individual appointed by the Long Term Care Ombudsman to serve as  
6 a representative in order to carry out the purpose of ORS 441.100 to 441.153.

7        (4) “Long term care facility” means *[any]* a licensed skilled nursing facility **or** intermediate care  
8 facility[,] as defined in *[rules adopted under]* ORS 442.015, **an** adult foster *[homes]* **home as defined**  
9 **in ORS 443.705** *[with]* **that serves** residents over 60 years of age *[and]*, **or a** residential care facility  
10 as defined in ORS 443.400.

11        **SECTION 4.** ORS 441.103 is amended to read:

12        441.103. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care  
13 Ombudsman shall function separately and independently from any other state agency. The Governor  
14 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees  
15 nominated by the Long Term Care Advisory Committee *[established under ORS 441.137]* **in accord-**  
16 **ance with section 2 of this 2011 Act.** Vacancies shall be filled within *[60]* **90** days in the same  
17 manner as appointments are made, subject to Senate confirmation under ORS 171.562 and 171.565.  
18 **The appointee may not assume the Long Term Care Ombudsman position until confirmed**  
19 **by the Senate.**

20        (2) **The Governor may remove** the Long Term Care Ombudsman *[may be removed]* for just  
21 cause, upon recommendation to the Governor by the Long Term Care Advisory Committee, **volun-**  
22 **teer ombudsmen, advocates for seniors and persons with disabilities and other individuals**  
23 **involved with long term care issues.**

24        (3) The Long Term Care Ombudsman shall have background and **demonstrated knowledge and**  
25 experience in the following areas:

26        (a) The field of aging;

27        (b) Health care;

28        (c) Working with community programs;

29        (d) *[Strong understanding of]* Long term care issues, both regulatory and policy;

30        (e) Working with health care providers;

31        (f) Working with and involvement in volunteer programs; *[and]*

32        (g) Administrative and managerial experience;

33        **(h) Community-based long term care and the Oregon long term care model; and**

34        **(i) Advocacy on behalf of seniors and persons with disabilities.**

35        **(4) The Long Term Care Ombudsman may not have:**

36        **(a) Served in the preceding 10 years as an administrator or owner of a long term care**  
37 **facility; or**

38        **(b) A financial interest in a long term care facility.**

39        **SECTION 5.** ORS 441.109 is amended to read:

40        441.109. The office of the Long Term Care Ombudsman shall carry out the following duties:

41        (1) Investigate and resolve complaints made by or for residents of long term care facilities about  
42 administrative actions that may adversely affect their health, safety, welfare or rights, including  
43 subpoenaing any person to appear, give sworn testimony or to produce documentary or other evi-  
44 dence that is reasonably material to any matter under investigation.

45        (2) Undertake, participate in or cooperate with persons and agencies in such conferences, in-

1 quires, meetings or studies as may lead to improvements in the functioning of long term care fa-  
2 cilities.

3 (3) Monitor the development and implementation of federal, state and local laws, regulations and  
4 policies that relate to long term care facilities in this state.

5 (4) Provide information to public agencies about the problems of residents of long term care fa-  
6 cilities.

7 (5) Work closely with cooperative associations and citizen groups in this state.

8 (6) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.

9 (7) Collaborate with the Department of Human Services and the Nursing Home Administrators  
10 Board to establish a statewide system to collect and analyze information on complaints and condi-  
11 tions in long term care facilities for the purpose of publicizing improvements and resolving signif-  
12 icant problems.

13 (8) Appoint designees, **as provided in ORS 441.131**, to serve as local representatives of the of-  
14 fice in various districts of the state and regularly monitor their functions.

15 (9) Specify qualifications and duties of designees.

16 (10) Adopt rules necessary for carrying out ORS 441.100 to [441.133] **441.153**, after consultation  
17 with the committee.

18 (11) Provide periodically, or at least twice annually, a report to the Governor, department and  
19 the Legislative Assembly.

20 (12) Prepare necessary reports with the assistance of the department.

21 **SECTION 6.** ORS 441.131 is amended to read:

22 441.131. (1) The **Long Term Care Ombudsman shall appoint designees** [*appointments of*  
23 *designees shall be made*] in consultation with a local screening committee [*which*] **appointed by and**  
24 **serving at the pleasure of the ombudsman. The local screening committee** may [*consist of but*  
25 *not be*] **include but is not** limited to persons representing:

26 (a) The area agency on aging.

27 (b) The local office of the Department of Human Services.

28 (c) The local health department.

29 (d) Senior citizens groups in the area.

30 (e) Long term care facilities in the area.

31 (f) Local elected officials.

32 **(2) Designees shall:**

33 **(a) Have experience with long term care facilities or with residents or potential residents**  
34 **of long term care facilities;**

35 **(b) Have the ability to communicate well;**

36 **(c) Understand the laws, rules and regulations governing long term care facilities; and**

37 **(d) Be assertive and objective.**

38 **(3) The Long Term Care Ombudsman shall give preference in the appointment of**  
39 **designees to individuals with experience in social services, gerontology, nursing or paralegal**  
40 **work.**

41 [(2)] (4) [*To be appointed as a designee, a person*] **Upon appointment, a designee** must complete  
42 six days of initial training and attend quarterly training sessions which are approved by the Long  
43 Term Care Ombudsman and which shall be coordinated and funded by the Department of Human  
44 Services subject to the availability of funds therefor. [*Local screening committees shall be appointed*  
45 *by and serve at the pleasure of the ombudsman.*] **The office of the Long Term Care Ombudsman**

1 **shall maintain a directory of all designees.**

2 [(3)] (5) Designees must sign a contract with the state [*which*] **that** outlines the scope of their  
 3 duties. [*In districts where a designee is an employee or agent of a local entity, a three-party contract*  
 4 *shall be executed. Violation of the contract is cause for the termination of the appointment. A directory*  
 5 *of all designees shall be maintained in the office of the Long Term Care Ombudsman.*] **The Long**  
 6 **Term Care Ombudsman may remove a designee, after notice and an opportunity for a con-**  
 7 **tested case hearing in accordance with ORS chapter 183, if the designee violates the con-**  
 8 **tract.**

9 [(4) *The qualifications of designees shall include experience with long term care facilities or resi-*  
 10 *dents thereof or potential residents including the ability to communicate well, to understand laws, rules*  
 11 *and regulations, and to be assertive, yet objective.*]

12 [(5) *Experience in either social service, gerontology, nursing or paralegal work shall be*  
 13 *preferred.*]

14 (6) The contract shall [*include statements*] **state** that the purpose of the Long Term Care Om-  
 15 budsman Program is to:

16 (a) Promote rapport and trust between the residents, staff of [*the nursing home and nursing*  
 17 *home*] **a long term care facility and the Long Term Care Ombudsman Program;**

18 (b) Assist [*nursing home*] residents [*with participating more actively*] **in long term care facilities**  
 19 **with having a more active role** in determining the [*delivery of*] services **to be delivered** in long  
 20 term care facilities;

21 (c) Serve as an educational resource;

22 (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate  
 23 agency; and

24 (e) Assure equitable resolution of problems.

25 (7) The duties of the designees are to:

26 (a) Visit each assigned long term care facility on a regular basis **and during each visit:**

27 (A) [*Upon arrival and departure,*] Inform a specified staff member **of the designee's arrival and**  
 28 **departure.**

29 (B) Review, with a specified staff member, any problems or concerns [*which*] **that** need to be  
 30 considered.

31 (C) Visit individual residents and resident councils.

32 (b) Maintain liaison with appropriate agencies and the Long Term Care Ombudsman.

33 (c) Report **monthly**, in writing, [*monthly*] to the Long Term Care Ombudsman.

34 (d) Keep residents and long term care staff informed of the Long Term Care Ombudsman Pro-  
 35 gram.

36 (e) Periodically review the [*Patients' Bill of Rights*] **residents' and nursing home patients'**  
 37 **bill of rights under ORS 441.600 to 441.625 and 443.739** with residents, families, guardians, ad-  
 38 ministrators and staff.

39 (f) Perform other related duties as specified.

40 **SECTION 7.** ORS 441.142 is amended to read:

41 441.142. The Long Term Care Advisory Committee shall:

42 (1) Monitor the Long Term Care Ombudsman Program.

43 (2) Advise the Governor and the Legislative Assembly on the Long Term Care Ombudsman  
 44 Program.

45 (3) Nominate, after interviews and [*according to prescribed criteria*] **in accordance with section**

1 **2 of this 2011 Act**, three persons to fill the *[office of]* Long Term Care Ombudsman **position**.

2 **SECTION 8.** ORS 441.147 is amended to read:

3 441.147. (1) The Long Term Care Advisory Committee shall select one of its members as chair-  
4 person and another as vice chairperson, for such terms and with duties and powers necessary for  
5 the performance of the functions of such offices as the committee determines.

6 (2) A majority of the members of the committee constitutes a quorum for the transaction of  
7 business. Decisions may be made by a majority of the quorum.

8 (3) The committee shall meet at least once each month at a place, day and hour determined by  
9 the committee. The committee also shall meet at other times and places specified by the call of the  
10 chairperson or of a majority of the members of the committee. **The committee shall provide a**  
11 **period of at least 15 minutes to receive public testimony or written comments at each public**  
12 **meeting. All meetings must be recorded by electronic means and the recordings must be**  
13 **maintained and accessible to the public for at least two years.**

14 (4) The committee shall confer each month with the Long Term Care Ombudsman.

15 [(4)] (5) A member of the Long Term Care Advisory Committee is entitled to compensation and  
16 expenses as provided in ORS 292.495.

17