

Enrolled
Senate Bill 626

Sponsored by Senators MONNES ANDERSON, KNOPP; Senators DINGFELDER, KRUSE,
ROBLAN, Representatives GELSER, GORSEK

CHAPTER

AN ACT

Relating to ombudsman to serve vulnerable adults in residential care; creating new provisions; amending ORS 410.550, 441.100, 441.103, 441.109, 441.113, 441.117, 441.121, 441.124, 441.127, 441.131, 441.133, 441.137, 441.142, 441.146, 441.153, 443.455 and 443.825; and repealing ORS 441.147.

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

SECTION 1. ORS 441.100 is amended to read:

441.100. As used in ORS 441.100 to 441.153:

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

[(2) "Committee" means the Long Term Care Advisory Committee.]

[(3)] (1) "Designee" means an individual appointed by the Long Term Care Ombudsman to serve as a representative in order to carry out the purpose of ORS 441.100 to 441.153.

[(4) "Long term care facility" means any licensed skilled nursing facility intermediate care facility, as defined in rules adopted under ORS 442.015, adult foster homes with residents over 60 years of age and residential care facility as defined in ORS 443.400.]

(2) "Residential facility" includes a:

(a) Long term care facility;

(b) Residential facility as defined in ORS 443.400, excluding a:

(A) Facility housing persons committed under ORS 161.327; and

(B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treatment;

(c) Licensed adult foster home as defined in ORS 443.705; and

(d) Developmental disability child foster home, as defined in ORS 443.830, that is certified by the Department of Human Services.

SECTION 2. ORS 441.103 is amended to read:

441.103. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care Ombudsman shall function separately and independently from any other state agency. The Governor shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees nominated by the *[Long Term Care]* **Residential Facilities** Advisory Committee established under ORS 441.137. **The appointment of the Long Term Care Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565.** *[Vacancies]* **A vacancy shall be filled within 60 days in the same manner as an appointment is made.** *[appointments are made, subject to Senate confirmation under ORS 171.562 and 171.565.]*

(2) The Long Term Care Ombudsman may be removed for just cause, upon recommendation to the Governor by the [Long Term Care] **Residential Facilities** Advisory Committee.

(3) The Long Term Care Ombudsman shall have background and experience in the following areas:

- (a) The [field] **fields of aging, mental health or developmental disabilities;**
- (b) **Physical or behavioral** health care;
- (c) Working with community programs;
- (d) Strong understanding of long term care issues, both regulatory and policy;
- (e) Working with health care providers;
- (f) Working with and involvement in volunteer programs; and
- (g) Administrative and managerial experience.

SECTION 3. ORS 441.109 is amended to read:

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

[(1)] (a) Investigate and resolve complaints made by or for residents of [long term care] **residential** facilities about administrative actions that may adversely affect their health, safety, welfare or rights, including subpoenaing any person to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to any matter under investigation.

[(2)] (b) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as may lead to improvements in the functioning of [long term care] **residential** facilities.

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

[(4)] (d) Provide information to public agencies about the problems of residents of [long term care] **residential** facilities.

[(5)] (e) Work closely with cooperative associations and citizen groups in this state **and the state protection and advocacy system under ORS 192.517.**

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

[(7)] (g) Collaborate with the **Oregon Health Authority, the Department of Human Services, [and] the Nursing Home Administrators Board and any other appropriate agencies and organizations** to establish a statewide system to collect and analyze information on complaints and conditions in [long term care] **residential** facilities for the purpose of publicizing improvements and resolving significant problems.

[(8)] (h) Appoint designees to serve as local representatives of the office in various districts of the state and regularly monitor their functions.

[(9)] (i) Specify qualifications and duties of designees.

[(10)] (j) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with the **Residential Facilities Advisory** Committee.

[(11)] (k) Provide periodically, or at least [twice] annually, a report to the Governor, **authority,** department and [the] Legislative Assembly.

[(12)] (L) Prepare necessary reports with the assistance of the **authority and the** department.

(2) **At least quarterly, the Oregon Health Authority and the Department of Human Services shall provide the Long Term Care Ombudsman with a list of the number of licensed or certified beds in each residential facility for which the ombudsman has responsibilities under this section.**

(3) **As used in this section, "administrative action" means any action or decision made by an owner, employee or agent of a residential facility or by a public agency that affects the services to residents of the facility.**

SECTION 4. ORS 441.113 is amended to read:

441.113. The Long Term Care Ombudsman shall establish procedures to maintain the confidentiality of the records and files of residents of [long term care] **residential** facilities. These procedures must meet the following requirements:

(1) The ombudsman or designee *[shall]* **may** not disclose, except to state agencies, the identity of any resident unless the complainant or the resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the disclosure may be made.

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

SECTION 5. ORS 441.117 is amended to read:

441.117. (1) The Long Term Care Ombudsman and each designee shall have the right of entry into *[long term care]* **residential** facilities at any time considered necessary and reasonable by the ombudsman or the designee for the purpose of:

- (a) Investigating and resolving complaints **made** by residents or **made** on their behalf;
- (b) Interviewing residents, with their consent, in private;
- (c) Offering the services of the ombudsman or **the** designee to any resident, in private;
- (d) Interviewing employees or agents of the *[long term care]* facility;
- (e) Consulting regularly with the facility administration; and
- (f) Providing services authorized by law or by rule.

(2) The Long Term Care ombudsman shall have access to any resident's records, and to records of any public agency necessary to the duties of the *[office]* **ombudsman**, including records on patient abuse complaints made pursuant to ORS **430.735 to 430.765**, 441.630 to 441.680 and 441.995. *[Nothing contained in]* **The provisions of** ORS 192.553 to 192.581 *[is]* **are not** intended to limit the access of the Long Term Care Ombudsman to medical records of residents of *[long term care]* **residential** facilities. Designees may have access to individual resident's records, including medical records as authorized by the resident or resident's legal representative, if needed to investigate a complaint.

(3) Entry and investigation authorized by this section shall be done in a manner that does not disrupt significantly the providing of nursing, **residential** or other personal care **or treatment** to residents.

(4) The ombudsman or the designee must show identification to the person in charge of the facility. The resident shall have the right to refuse to communicate with the ombudsman or **the** designee. The refusal shall be made directly to the ombudsman or **the** designee and not through an intermediary.

(5) The resident shall have the right to participate in planning any course of action to be taken on behalf of the resident by the ombudsman or the designee.

SECTION 6. ORS 441.121 is amended to read:

441.121. (1) Following an investigation, the **Long Term Care** Ombudsman or the designee shall report opinions or recommendations to the party or parties affected *[thereby]* and, **if appropriate**, shall attempt to resolve the complaint¹, *using, whenever possible,* **using** informal techniques of mediation, conciliation and persuasion. Complaints of conditions adversely affecting residents of *[long term care]* **residential** facilities, or *[those]* **complaints of conditions** threatening the safety or well-being of residents that cannot be resolved in the manner described in this section, shall be referred to an appropriate state agency.

(2) Programs that promote the safety or emotional or physical well-being of *[long term care]* residents **of residential facilities** shall be promoted and publicized by the ombudsman and the designees.

SECTION 7. ORS 441.124 is amended to read:

441.124. (1) The Long Term Care Ombudsman shall prepare and distribute to each *[long term care]* **residential** facility in this state a written notice describing the procedures to follow in making a complaint, including the address and telephone number of the ombudsman and local designee, if any, **and a poster describing the Long Term Care Ombudsman Program and providing contact information.**

(2) The administrator of each [*long term care*] **residential** facility shall post the written notice **and poster** required by this section in conspicuous places in the facility in accordance with procedures provided by the ombudsman and shall give [*such*] **the written** notice to [*any*] **each** resident and legally appointed guardian, if any.

SECTION 8. ORS 441.127 is amended to read:

441.127. (1) Any employee or agent of [*the long term care*] **a residential** facility acting in good faith in discussing [*patient*] **resident** care pursuant to ORS 441.117 shall have immunity from any civil liability[,] that might otherwise be incurred or imposed with respect to the making of such report.

(2) Any employee or agent who makes a report pursuant to ORS 441.117 [*shall*] **may** not be subjected to any retaliation by any official or other employee of a [*long term care*] **residential** facility solely for making a report, including but not limited to restriction of otherwise lawful access to the facility or to any resident [*thereof*] **of the facility**, or, if an employee, to dismissal or harassment.

(3) The **Long Term Care** Ombudsman or the designee acting in good faith in discussing [*patient*] **resident** care pursuant to ORS 441.117 shall have immunity from any civil liability, that might otherwise be incurred or imposed with respect to the discussion.

SECTION 9. ORS 441.131 is amended to read:

441.131. (1) The appointments of designees shall be made in consultation with a local screening committee [*which*] **that** may consist of but not be limited to persons representing:

- (a) The area agency on aging.
- (b) The local office of the Department of Human Services.
- (c) The local health department.
- (d) Senior citizens groups in the area.
- (e) [*Long term care*] **Residential** facilities in the area.
- (f) Local elected officials.
- (g) The community mental health program director or local mental health authority.**
- (h) The community developmental disabilities program director.**
- (i) Representatives from the Oregon Health Authority.**

(2) To be appointed as a designee, a person must complete six days of initial training and attend quarterly training sessions [*which*] **that** are approved by the Long Term Care Ombudsman and [*which*] **that** shall be coordinated and funded by the Department of Human Services **and the Oregon Health Authority**, subject to the availability of funds [*therefor*]. Local screening committees shall be appointed by and serve at the pleasure of the ombudsman.

(3) Designees must sign a contract with the state [*which*] **that** outlines the scope of their duties. In districts where a designee is an employee or agent of a local entity, a three-party contract shall be executed. Violation of the contract is cause for the termination of the appointment. A directory of all designees shall be maintained in the office of the Long Term Care Ombudsman.

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

(5) **Applicants who have** experience in either social service, **mental health, developmental disability services**, gerontology, nursing or paralegal work [*shall be preferred*] **shall be given preference in the appointment of designees.**

(6) The contract shall include statements that the purpose of the Long Term Care Ombudsman Program is to:

- (a) Promote rapport and trust between the residents[,] **and** staff of the [*nursing home and nursing home ombudsman program*] **residential facilities and Long Term Care Ombudsman;**
- (b) Assist [*nursing home*] residents with participating more actively in determining the delivery of services [*in long term care*] **at the facilities;**
- (c) Serve as an educational resource;

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

(e) [Assure] **Ensure** equitable resolution of problems.

(7) The duties of the designees are to:

(a) Visit each assigned [*long term care*] **residential** facility on a regular basis:

(A) Upon arrival and departure, inform a specified staff member.

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

(C) Visit individual residents and resident councils.

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

(c) Report, in writing, monthly to the Long Term Care Ombudsman.

(d) Keep residents and [*long term care*] staff informed of the Long Term Care Ombudsman Program.

(e) Periodically review the patients' bill of rights **prescribed in ORS 441.605, 441.610 and 441.612** with residents, families, guardians, administrators and staff of **residential facilities**.

(f) Perform other related duties as specified.

SECTION 10. ORS 441.133 is amended to read:

441.133. Nothing in ORS 441.100 to 441.153 shall affect the right of residents of a [*long term care*] **residential** facility to see visitors of their choice.

SECTION 11. ORS 441.137 is amended to read:

441.137. (1) There is established a [*Long Term Care*] **Residential Facilities** Advisory Committee of [*seven*] **nine** members to be appointed in the following manner:

(a) One person appointed by the Speaker of the House of Representatives;

(b) One person appointed by the President of the Senate;

(c) One person appointed by the House Minority Leader;

(d) One person appointed by the Senate Minority Leader;

(e) [*Two persons, from a*] **One person appointed by the Governor from each** list of four names submitted by [*the organizations of*] **organizations for seniors, organizations for persons with mental illness and the Oregon Council on Developmental Disabilities** [*appointed by the Governor*]; and

(f) [*One person*] **Two persons** appointed by the Governor.

(2) Members described in subsection (1)(e) and (f) of this section are subject to confirmation by the Senate under ORS 171.562 and 171.565.

(3) The term of office of each member is four years. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) The members of the committee must be [*citizens*] **residents** of this state who are broadly representative, to the extent possible, of persons [*over 55 years of age*] **residing in residential facilities**, including [*persons with disabilities and*] members of racial and ethnic minorities, who have knowledge and interest in the problems of [*the elderly*] **persons residing in residential facilities**, and **who** are representative of all areas of [*the*] **this state** [. *At least five members shall be at least 60 years of age.*] **and the demographics of groups served by the Long Term Care Ombudsman.**

(5) A member of the committee may not have a financial or fiduciary interest in [*long term care*] **residential** facilities or service providers, or involvement in the licensing or certification of [*long term care*] **residential** facilities or service providers.

(6) **The committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.**

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

(8) **The committee shall meet at least once each month at a place, day and hour determined by the committee. The committee also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. The committee shall confer each month with the Long Term Care Ombudsman. All meetings are subject to ORS 192.610 to 192.690.**

(9) **A member of the committee is entitled to compensation and expenses as provided in ORS 292.495.**

SECTION 12. ORS 441.142 is amended to read:

441.142. The [*Long Term Care*] **Residential Facilities** Advisory Committee shall:

(1) Monitor the Long Term Care Ombudsman Program.

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

(3) Nominate, after interviews and according to prescribed criteria, three persons to fill the [*office of*] Long Term Care Ombudsman **position or to fill a vacancy in the position.**

SECTION 13. ORS 441.146 is amended to read:

441.146. (1) A [*long term care*] **residential** facility that files a complaint against a designee appointed under ORS 441.131 and objects to the action of the Long Term Care Ombudsman in resolving the complaint may appeal the ombudsman's action to a panel of the [*Long Term Care*] **Residential Facilities** Advisory Committee.

(2) The committee on its own motion may review any action by the ombudsman appealable under this section. The review shall provide an opportunity for written and oral presentation by the [*long term care*] **residential** facility and the ombudsman. The committee shall issue its findings and any instructions to the ombudsman in written form consistent with the federal Older Americans Act **or other applicable federal law.**

(3) If the committee disagrees with the action of the ombudsman, the committee may refer the resolution back to the ombudsman with instructions consistent with the federal Older Americans Act **or other applicable federal law** to conform the ombudsman's action in the matter to the recommendations of the committee.

SECTION 14. ORS 441.153 is amended to read:

441.153. The Long Term Care Ombudsman Account is established **in the State Treasury**, separate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for carrying out the responsibilities of the Long Term Care Ombudsman.

SECTION 15. ORS 443.455 is amended to read:

443.455. (1) **Except as provided in subsection (5) of this section**, for purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

(2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential care facilities, residential training facilities and residential training homes that are not in compliance with ORS 443.400 to 443.455.

(3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties for residential treatment facilities and residential treatment homes that are not in compliance with ORS 443.400 to 443.455.

(4) If the department or authority investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a residential facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

(a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

(b) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365 and 163.375.

(c) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(d) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

(5) Civil penalties recovered from a residential training facility, residential training home, residential treatment facility or residential treatment home shall be deposited in the Long Term Care Ombudsman Account established in ORS 441.153.

SECTION 16. ORS 443.825 is amended to read:

443.825. All penalties recovered under ORS 443.790 to 443.815 shall be deposited:

(1) In the Quality Care Fund established in ORS 443.001 **if paid by an adult foster home licensed to provide residential care to persons with physical disabilities.**

(2) **In the Long Term Care Ombudsman Account established in ORS 441.153 if paid by an adult foster home licensed to provide care to persons with mental illness or developmental disabilities.**

SECTION 17. ORS 410.550 is amended to read:

410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is created, to consist of 12 members. Appointed members shall be residents of the State of Oregon and representative of the geographic locations of all long term care facilities and community-based care facilities in this state. The members shall include:

(a) The Long Term Care Ombudsman, who shall serve as a standing member of the council;

(b) A representative of the Governor's Commission on Senior Services, to be appointed by the commission;

(c) A representative of the Oregon Disabilities Commission, to be appointed by the commission;

(d) A representative of the Oregon Association of Area Agencies on Aging and Disabilities, to be appointed by the Governor;

(e) A representative of a senior or disabilities advocacy organization or an individual who advocates on behalf of seniors or persons with disabilities, to be appointed by the Governor;

(f) A nursing home administrator licensed under ORS 678.710 to 678.820 who has practiced continuously in Oregon in long term care for three years immediately preceding appointment, to be appointed by the Speaker of the House of Representatives;

(g) Two consumers of [long term care] **residential facilities, as defined in ORS 441.100**, or community-based care facilities or family members of such residents, to be appointed by the Speaker of the House of Representatives;

(h) A director of nurses of an Oregon long term care facility who has practiced in this state in long term care for three years preceding appointment, to be appointed by the Speaker of the House of Representatives;

(i) A representative of an assisted living facility or a residential care facility, to be appointed by the President of the Senate;

(j) A representative of an adult foster home, to be appointed by the President of the Senate; and

(k) An in-home care agency provider, to be appointed by the President of the Senate.

(2) The term of office for each member appointed under this section shall be three years or until a successor has been appointed and qualified.

(3) Members of the council shall receive no compensation for their services but unpaid volunteers not otherwise compensated shall be allowed actual and necessary travel expenses incurred in the performance of their duties.

(4) The council shall:

(a) Elect a chairperson from among its members and elect or appoint a secretary, each of whom shall hold office for one year or until successors are elected;

(b) Hold an annual meeting and hold other meetings at such times and places as the Department of Human Services or the chairperson of the council may direct;

(c) Keep a record of its proceedings that is open to inspection at all times; and

(d) Act in an advisory capacity to the department on matters pertaining to quality of long term care facilities and community-based care facilities and reimbursement for long term care services and community-based care services.

SECTION 18. ORS 441.147 is repealed.

SECTION 19. The amendments to ORS 410.550, 441.100, 441.103, 441.109, 441.113, 441.117, 441.121, 441.124, 441.127, 441.131, 441.133, 441.137, 441.142, 441.146, 441.153, 443.455 and 443.825 by sections 1 to 17 of this 2013 Act and the repeal of ORS 441.147 by section 18 of this 2013 Act become operative on July 1, 2014.

Passed by Senate July 6, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House July 7, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State