

SENATE AMENDMENTS TO SENATE BILL 626

By COMMITTEE ON HEALTH CARE AND HUMAN SERVICES

April 19

1 On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line and lines
2 3 through 5 and insert “amending ORS 410.550, 441.100, 441.103, 441.109, 441.113, 441.117, 441.121,
3 441.124, 441.127, 441.131, 441.133, 441.137, 441.142, 441.146, 441.153, 443.455 and 443.825; and repeal-
4 ing ORS 441.147.”.

5 Delete lines 7 through 27 and delete pages 2 through 19 and insert:

6 “**SECTION 1.** ORS 441.100 is amended to read:

7 “441.100. **As used in ORS 441.100 to 441.153:**

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

10 “[*(2) ‘Committee’ means the Long Term Care Advisory Committee.*]

11 “[*(3) (1) ‘Designee’ means an individual appointed by the Long Term Care Ombudsman to serve*
12 *as a representative in order to carry out the purpose of ORS 441.100 to 441.153.*]

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

16 “**(2) ‘Residential facility’ includes a:**

17 “**(a) Long term care facility;**

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

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

20 “**(B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treat-**
21 **ment;**

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

23 “**(d) Developmental disability child foster home, as defined in ORS 443.830, that is certi-**
24 **fied by the Department of Human Services.**

25 “**SECTION 2.** ORS 441.103 is amended to read:

26 “441.103. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care
27 Ombudsman shall function separately and independently from any other state agency. The Governor
28 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees
29 nominated by the [*Long Term Care*] **Residential Facilities** Advisory Committee established under
30 ORS 441.137. **The appointment of the Long Term Care Ombudsman is subject to Senate con-**
31 **firmation under ORS 171.562 and 171.565.** [*Vacancies*] **A vacancy** shall be filled within 60 days in
32 the same manner as **an appointment is made.** [*appointments are made, subject to Senate confirma-*
33 *tion under ORS 171.562 and 171.565.*]

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

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

3 “(a) The *[field]* **fields** of aging, **mental health or developmental disabilities**;

4 “(b) **Physical or behavioral** health care;

5 “(c) Working with community programs;

6 “(d) Strong understanding of long term care issues, both regulatory and policy;

7 “(e) Working with health care providers;

8 “(f) Working with and involvement in volunteer programs; and

9 “(g) Administrative and managerial experience.

10 “**SECTION 3.** ORS 441.109 is amended to read:

11 “441.109. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

12 “[1] (a) Investigate and resolve complaints made by or for residents of *[long term care]* **resi-**
13 **dential** facilities about administrative actions that may adversely affect their health, safety, welfare
14 or rights, including subpoenaing any person to appear, give sworn testimony or to produce docu-
15 mentary or other evidence that is reasonably material to any matter under investigation.

16 “[2] (b) Undertake, participate in or cooperate with persons and agencies in such conferences,
17 inquiries, meetings or studies as may lead to improvements in the functioning of *[long term care]*
18 **residential** facilities.

19 “[3] (c) Monitor the development and implementation of federal, state and local laws, regu-
20 lations and policies that relate to *[long term care]* **residential** facilities in this state.

21 “[4] (d) Provide information to public agencies about the problems of residents of *[long term*
22 *care]* **residential** facilities.

23 “[5] (e) Work closely with cooperative associations and citizen groups in this state **and the**
24 **state protection and advocacy system under ORS 192.517.**

25 “[6] (f) Widely publicize the Long Term Care Ombudsman’s service, purpose and mode of op-
26 eration.

27 “[7] (g) Collaborate with the **Oregon Health Authority, the** Department of Human Services,
28 *[and]* the Nursing Home Administrators Board **and any other appropriate agencies and organ-**
29 **izations** to establish a statewide system to collect and analyze information on complaints and con-
30 ditions in *[long term care]* **residential** facilities for the purpose of publicizing improvements and
31 resolving significant problems.

32 “[8] (h) Appoint designees to serve as local representatives of the office in various districts
33 of the state and regularly monitor their functions.

34 “[9] (i) Specify qualifications and duties of designees.

35 “[10] (j) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with
36 the **Residential Facilities Advisory** Committee.

37 “[11] (k) Provide periodically, or at least *[twice]* annually, a report to the Governor, **authority,**
38 department and *[the]* Legislative Assembly.

39 “[12] (L) Prepare necessary reports with the assistance of the **authority and the** department.

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

44 “(3) **As used in this section, ‘administrative action’ means any action or decision made**
45 **by an owner, employee or agent of a residential facility or by a public agency that affects the**

1 **services to residents of the facility.**

2 “**SECTION 4.** ORS 441.113 is amended to read:

3 “441.113. The Long Term Care Ombudsman shall establish procedures to maintain the
4 confidentiality of the records and files of residents of [*long term care*] **residential** facilities. These
5 procedures must meet the following requirements:

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

9 “(2) The identity of any complainant or resident on whose behalf a complaint is made, or indi-
10 vidual providing information on behalf of the **complainant or the** resident [*or complainant*], shall
11 be confidential. If the complaint becomes the subject of judicial proceedings, the investigative in-
12 formation held by the ombudsman or designee shall be disclosed for the purpose of the proceedings
13 if requested by the court.

14 “**SECTION 5.** ORS 441.117 is amended to read:

15 “441.117. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
16 into [*long term care*] **residential** facilities at any time considered necessary and reasonable by the
17 ombudsman or the designee for the purpose of:

18 “(a) Investigating and resolving complaints **made** by residents or **made** on their behalf;

19 “(b) Interviewing residents, with their consent, in private;

20 “(c) Offering the services of the ombudsman or **the** designee to any resident, in private;

21 “(d) Interviewing employees or agents of the [*long term care*] facility;

22 “(e) Consulting regularly with the facility administration; and

23 “(f) Providing services authorized by law or by rule.

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

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

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

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

40 “**SECTION 6.** ORS 441.121 is amended to read:

41 “441.121. (1) Following an investigation, the **Long Term Care** Ombudsman or the designee shall
42 report opinions or recommendations to the party or parties affected [*thereby*] and, **if appropriate**,
43 shall attempt to resolve the complaint[, *using, whenever possible,*] **using** informal techniques of me-
44 diation, conciliation and persuasion. Complaints of conditions adversely affecting residents of [*long*
45 *term care*] **residential** facilities, or [*those*] **complaints of conditions** threatening the safety or

1 well-being of residents that cannot be resolved in the manner described in this section, shall be re-
2 ferred to an appropriate state agency.

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

6 “**SECTION 7.** ORS 441.124 is amended to read:

7 “441.124. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*long term*
8 *care*] **residential** facility in this state a written notice describing the procedures to follow in making
9 a complaint, including the address and telephone number of the ombudsman and local designee, if
10 any, **and a poster describing the Long Term Care Ombudsman Program and providing contact**
11 **information.**

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

16 “**SECTION 8.** ORS 441.127 is amended to read:

17 “441.127. (1) Any employee or agent of [*the long term care*] **a residential** facility acting in good
18 faith in discussing [*patient*] **resident** care pursuant to ORS 441.117 shall have immunity from any
19 civil liability[,] that might otherwise be incurred or imposed with respect to the making of such re-
20 port.

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

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

29 “**SECTION 9.** ORS 441.131 is amended to read:

30 “441.131. (1) The appointments of designees shall be made in consultation with a local screening
31 committee [*which*] **that** may consist of but not be limited to persons representing:

32 “(a) The area agency on aging.

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

34 “(c) The local health department.

35 “(d) Senior citizens groups in the area.

36 “(e) [*Long term care*] **Residential** facilities in the area.

37 “(f) Local elected officials.

38 “(g) **The community mental health program director or local mental health authority.**

39 “(h) **The community developmental disabilities program director.**

40 “(i) **Representatives from the Oregon Health Authority.**

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

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

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

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

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

14 “(a) Promote rapport and trust between the residents[,] **and** staff of the [nursing home and
15 nursing home ombudsman program] **residential facilities and Long Term Care Ombudsman;**

16 “(b) Assist [nursing home] residents with participating more actively in determining the delivery
17 of services [in long term care] **at the** facilities;

18 “(c) Serve as an educational resource;

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

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

22 “(7) The duties of the designees are to:

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

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

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

27 “(C) Visit individual residents and resident councils.

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

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

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

32 “(e) Periodically review the patients’ bill of rights **prescribed in ORS 441.605, 441.610 and**
33 **441.612** with residents, families, guardians, administrators and staff **of residential facilities.**

34 “(f) Perform other related duties as specified.

35 “**SECTION 10.** ORS 441.133 is amended to read:

36 “441.133. Nothing in ORS 441.100 to 441.153 shall affect the right of residents of a [long term
37 care] **residential** facility to see visitors of their choice.

38 “**SECTION 11.** ORS 441.137 is amended to read:

39 “441.137. (1) There is established a [Long Term Care] **Residential Facilities** Advisory Committee
40 of [seven] **nine** members to be appointed in the following manner:

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

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

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

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

45 “(e) [Two persons, from a] **One person appointed by the Governor from each** list of four

1 names submitted by *[the organizations of]* **organizations for seniors, organizations for persons**
2 **with mental illness and the Oregon Council on Developmental Disabilities** *[appointed by the*
3 *Governor]*; and

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

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

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

11 “(4) The members of the committee must be *[citizens]* **residents** of this state who are broadly
12 representative, to the extent possible, of persons *[over 55 years of age]* **residing in residential fa-**
13 **ilities**, including *[persons with disabilities and]* members of racial and ethnic minorities, who have
14 knowledge and interest in the problems of *[the elderly]* **persons residing in residential facilities**,
15 and **who** are representative of all areas of *[the]* **this** state. *At least five members shall be at least*
16 *60 years of age.]* **and the demographics of groups served by the Long Term Care Ombudsman.**

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

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

23 “(7) **A majority of the members of the committee constitutes a quorum for the trans-**
24 **action of business. Decisions may be made by a majority of the quorum.**

25 “(8) **The committee shall meet at least once each month at a place, day and hour deter-**
26 **mined by the committee. The committee also shall meet at other times and places specified**
27 **by the call of the chairperson or of a majority of the members of the committee. The com-**
28 **mittee shall confer each month with the Long Term Care Ombudsman. All meetings are**
29 **subject to ORS 192.610 to 192.690.**

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

32 “**SECTION 12.** ORS 441.142 is amended to read:

33 “441.142. The *[Long Term Care]* **Residential Facilities** Advisory Committee shall:

34 “(1) Monitor the Long Term Care Ombudsman Program.

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

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

39 “**SECTION 13.** ORS 441.146 is amended to read:

40 “441.146. (1) A *[long term care]* **residential** facility that files a complaint against a designee ap-
41 pointed under ORS 441.131 and objects to the action of the Long Term Care Ombudsman in resolving
42 the complaint may appeal the ombudsman’s action to a panel of the *[Long Term Care]* **Residential**
43 **Facilities** Advisory Committee.

44 “(2) The committee on its own motion may review any action by the ombudsman appealable
45 under this section. The review shall provide an opportunity for written and oral presentation by the

1 [long term care] **residential** facility and the ombudsman. The committee shall issue its findings and
2 any instructions to the ombudsman in written form consistent with the federal Older Americans Act
3 **or other applicable federal law.**

4 “(3) If the committee disagrees with the action of the ombudsman, the committee may refer the
5 resolution back to the ombudsman with instructions consistent with the federal Older Americans
6 Act **or other applicable federal law** to conform the ombudsman’s action in the matter to the rec-
7 ommendations of the committee.

8 “**SECTION 14.** ORS 441.153 is amended to read:

9 “441.153. The Long Term Care Ombudsman Account is established **in the State Treasury,**
10 separate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other
11 grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care
12 Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for
13 carrying out the responsibilities of the Long Term Care Ombudsman.

14 “**SECTION 15.** ORS 443.455 is amended to read:

15 “443.455. (1) **Except as provided in subsection (5) of this section,** for purposes of imposing
16 civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS
17 441.705 to 441.745.

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

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

24 “(4) If the department or authority investigates and makes a finding of abuse arising from de-
25 liberate or other than accidental action or inaction that is likely to cause a negative outcome by a
26 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the
27 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose
28 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed
29 \$15,000 in any 90-day period. As used in this subsection:

30 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or death.

31 “(b) ‘Rape’ means rape in the first, second or third degree as described in ORS 163.355, 163.365
32 and 163.375.

33 “(c) ‘Serious injury’ means physical injury that creates a substantial risk of death or that causes
34 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
35 ment of the function of any bodily organ.

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

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

42 “**SECTION 16.** ORS 443.825 is amended to read:

43 “443.825. All penalties recovered under ORS 443.790 to 443.815 shall be deposited:

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

1 “(2) In the Long Term Care Ombudsman Account established in ORS 441.153 if paid by
2 an adult foster home providing care to persons with mental illness or developmental disabili-
3 ties.

4 “**SECTION 17.** ORS 410.550 is amended to read:

5 “410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is
6 created, to consist of 12 members. Appointed members shall be residents of the State of Oregon and
7 representative of the geographic locations of all long term care facilities and community-based care
8 facilities in this state. The members shall include:

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

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

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

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

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

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

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

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

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

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

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

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

33 “(3) Members of the council shall receive no compensation for their services but unpaid volun-
34 teers not otherwise compensated shall be allowed actual and necessary travel expenses incurred in
35 the performance of their duties.

36 “(4) The council shall:

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

39 “(b) Hold an annual meeting and hold other meetings at such times and places as the Depart-
40 ment of Human Services or the chairperson of the council may direct;

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

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

45 “**SECTION 18. ORS 441.147 is repealed.**”.

