

# A-Engrossed House Bill 2170

Ordered by the House April 25  
Including House Amendments dated April 25

Sponsored by Representative STARK, Senator GELSER, Representatives OLSON, KENY-GUYER, PILUSO, Senators DEMBROW, HANSELL, KRUSE; Representatives ALONSO LEON, MCLANE, Senator ROBLAN (Presession filed.)

## 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.

Establishes Office of Oregon Ombudsmen[ *containing*] **to provide administrative services and support to Office of the Long Term Care Ombudsman, Office of the Residential Facilities Ombudsman, Office of the Foster Parent Ombudsman, Office of the Foster Child Ombudsman and Office of the Oregon Public Guardian [and Conservator].** Specifies duties **of administrator of Office of Oregon Ombudsmen.**

**Establishes and specifies duties and powers of Foster Parent Ombudsman and Foster Child Ombudsman. Requires 24-hour hotline telephone number for foster parents to make complaints.** Requires Department of Human Services to notify foster parents and foster children of availability of Foster Child Ombudsman and Foster Parent Ombudsman to investigate complaints.

**Modifies duties and powers of Long Term Care Ombudsman, Residential Facilities Ombudsman and Oregon Public Guardian. Gives ombudsmen access to records necessary for investigating complaints, subject to conditions.**

**Establishes advisory committees for ombudsman offices and Office of the Oregon Public Guardian.**

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to ombudsmen; creating new provisions; amending ORS 21.007, 125.060, 125.075, 125.242,  
3 125.320, 125.410, 125.675, 125.678, 125.680, 125.683, 125.685, 125.687, 410.550, 418.201, 418.648,  
4 418.848, 419B.005, 441.402, 441.403, 441.406, 441.407, 441.408, 441.409, 441.411, 441.412, 441.413,  
5 441.414, 441.416, 441.417, 441.418, 441.419, 443.455, 443.738, 443.767, 443.825 and 476.030; and de-  
6 claring an emergency.

7 Whereas foster children and youth, having been removed from their families through no fault  
8 of their own, deserve to have their rights protected with access to support and resources so they  
9 can be happy, health and stable during their time in substitute care; now, therefore,

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

## OFFICE OF OREGON OMBUDSMEN

11  
12  
13  
14 **SECTION 1. (1) The Office of Oregon Ombudsmen is established to provide administrative**  
15 **services and support to the:**

- 16 (a) **Office of the Long Term Care Ombudsman;**
- 17 (b) **Office of the Residential Facilities Ombudsman;**
- 18 (c) **Office of the Oregon Public Guardian;**
- 19 (d) **Office of the Foster Parent Ombudsman; and**

**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 (e) **Office of the Foster Child Ombudsman.**

2 (2) **The Governor shall appoint an administrator of the Office of Oregon Ombudsmen**  
3 **who:**

4 (a) **Shall perform all administrative functions of the office;**

5 (b) **May appoint subordinate officers and employees for the office, prescribe their duties**  
6 **and set their compensation; and**

7 (c) **Shall, at least annually, provide a report to the Legislative Assembly, in the manner**  
8 **provided in ORS 192.245, on the activities of the offices listed in subsection (1)(a) to (e) of this**  
9 **section.**

10 **SECTION 2.** ORS 441.419 is amended to read:

11 441.419. The [*Long Term Care Ombudsman*] **Office of Oregon Ombudsmen** Account is estab-  
12 lished in the State Treasury, separate and distinct from the General Fund. [*All miscellaneous re-*  
13 *ceipts, gifts and federal and other grants received by the Long Term Care Ombudsman shall be*  
14 *deposited into the Long Term Care Ombudsman Account and are continuously appropriated to the*  
15 *Long Term Care Ombudsman for carrying out the responsibilities of the Long Term Care Ombudsman*  
16 *and the Oregon Public Guardian and Conservator.*] **The Office of the Long Term Care Ombuds-**  
17 **man, the Office of the Residential Facilities Ombudsman, the Office of the Foster Child**  
18 **Ombudsman and the Office of the Foster Parent Ombudsman shall each have a dedicated**  
19 **subaccount in the Office of Oregon Ombudsmen Account. All miscellaneous receipts, gifts**  
20 **and federal and other grants received by the Office of the Long Term Care Ombudsman, the**  
21 **Office of the Residential Facilities Ombudsman, the Office of the Foster Child Ombudsman**  
22 **and the Office of the Foster Parent Ombudsman shall be deposited in the appropriate sub-**  
23 **account. The moneys in each subaccount are continuously appropriated to the Office of the**  
24 **Long Term Care Ombudsman, the Office of the Residential Facilities Ombudsman, the Office**  
25 **of the Foster Child Ombudsman and the Office of the Foster Parent Ombudsman, as appro-**  
26 **priate.**

27 **SECTION 3.** The Department of Human Services shall transfer funds to be deposited in  
28 the subaccount of the Office of Oregon Ombudsmen Account dedicated to the Office of the  
29 Foster Child Ombudsman as necessary to support the Office of the Foster Child Ombudsman.

30  
31 **FOSTER CHILD OMBUDSMAN**

32  
33 **SECTION 4.** Sections 5 to 8 and 10 to 13 of this 2017 Act are added to and made a part  
34 of ORS chapter 418.

35 **SECTION 5.** (1) As used in this section:

36 (a) **“Foster child”** has the meaning given that term in ORS 418.200.

37 (b) **“Foster parent”** has means an individual who has a certificate to operate a foster  
38 home issued under ORS 418.635 and who is providing care to a foster child in the individual’s  
39 home.

40 (2) **The Office of the Foster Child Ombudsman is established. The Governor shall appoint**  
41 **the Foster Child Ombudsman for a four-year term in consultation with the Foster Child**  
42 **Ombudsman Advisory Committee. The Governor shall fill a vacancy within 60 days.**

43 (3) **The Foster Child Ombudsman shall:**

44 (a) **Provide foster children and individuals acting on their behalf with information re-**  
45 **garding the rights of foster children set forth in ORS 418.201;**

1       **(b) Investigate a complaint made by or on behalf of a foster child if the allegations con-**  
2 **tained in the complaint may adversely affect the health, safety, welfare or rights of the fos-**  
3 **ter child;**

4       **(c) Collaborate with the Department of Human Services, foster parents, attorneys, foster**  
5 **child advocates and supporters, court appointed special advocates and local citizen review**  
6 **boards to obtain timely responses to inquiries and requests and to resolve issues;**

7       **(d) Assist foster children and individuals acting on their behalf in locating and accessing**  
8 **resources in the community and in connecting with local service providers;**

9       **(e) Work with foster children and individuals acting on their behalf to identify and re-**  
10 **commend processes for:**

11       **(A) A foster child or individual acting on behalf of the foster child to make complaints**  
12 **about the foster child's care or interaction with the individuals and entities described in**  
13 **paragraph (c) of this subsection; and**

14       **(B) Engaging the participation of foster children and individuals acting on behalf of foster**  
15 **children in general studies, conferences, inquiries or meetings related to foster care in this**  
16 **state;**

17       **(f) Organize, participate in or cooperate with persons and agencies in general studies,**  
18 **conferences, inquiries or meetings that may result in recommendations for improvements in**  
19 **the functioning of the foster care system in this state;**

20       **(g) Monitor the development and implementation of federal, state and local laws and**  
21 **policies that relate to the foster care system in this state;**

22       **(h) Collect and compile data necessary to prepare the report submitted to the Governor**  
23 **under ORS 182.500 and provide a copy of the report to the Governor's Child Foster Care**  
24 **Advisory Commission established by section 1, chapter 76, Oregon Laws 2016;**

25       **(i) Provide information to state and local agencies about problems identified and reforms**  
26 **undertaken in the foster care system in this state and work closely with associations and**  
27 **citizen groups and with the state protection and advocacy system under ORS 192.517; and**

28       **(j) Establish and maintain the hotline telephone number for foster children required by**  
29 **ORS 418.201 (7).**

30       **(4) The Foster Child Ombudsman or a designee shall report to a foster child and to an**  
31 **individual that makes a complaint on behalf of the foster child the findings of the ombuds-**  
32 **man or designee in the investigation of the complaint and may make recommendations. If**  
33 **appropriate, the ombudsman or designee shall attempt to resolve the complaint using in-**  
34 **formal mediation or conflict resolution techniques. Complaints of conditions threatening the**  
35 **safety or well-being of a foster child must be reported to the department or law enforcement**  
36 **officials.**

37       **(5) A foster child, or individual acting on behalf of a foster child, who makes a complaint**  
38 **to the Foster Child Ombudsman in good faith under this section, or who participates in an**  
39 **investigation of a complaint may not be subjected to a penalty, sanction or restriction, or**  
40 **be denied any right, privilege or benefit, on account of making the complaint or participating**  
41 **in the investigation of the complaint.**

42       **(6) In order to encourage foster children and individuals acting on behalf of foster chil-**  
43 **dren to communicate with the Foster Child Ombudsman, any foster child, or individual act-**  
44 **ing on behalf of a foster child, who makes a complaint to the ombudsman in good faith under**  
45 **this section, or who participates in an investigation of a complaint, shall have immunity from**

1 any civil or criminal liability that might otherwise be incurred or imposed on account of  
2 making the complaint or participating in the investigation of the complaint.

3 (7) The Foster Child Ombudsman and each designee shall have access to records of any  
4 public agency, to the extent permitted by state and federal law, that are necessary to carry  
5 out the duties of the ombudsman. The provisions of ORS 192.553 to 192.581 are not intended  
6 to limit the access of the ombudsman to a foster child's records, including medical records  
7 as authorized by the foster child or individual legally authorized to act on behalf of the foster  
8 child, if needed to investigate a complaint.

9 (8) The Foster Child Ombudsman and the department shall enter into a confidentiality  
10 agreement permitting the ombudsman and each designee to have access to electronic records  
11 of the department that are necessary to carry out the duties of the ombudsman, if permitted  
12 by state and federal law. The agreement must ensure that records obtained by the ombuds-  
13 man from the department that are confidential, privileged or otherwise protected from dis-  
14 closure are not further disclosed, except as permitted by state and federal law.

15 (9) A foster child or individual legally authorized to act on behalf of the foster child shall  
16 have the right to participate in planning any course of action to be taken on behalf of the  
17 foster child by the Foster Child Ombudsman or the designee.

18 (10) All state agencies shall cooperate with and assist the Foster Child Ombudsman in  
19 the performance of the ombudsman's duties and functions.

20 **SECTION 6.** (1) The Foster Child Ombudsman may appoint designees to serve as repre-  
21 sentatives of the ombudsman in local communities. The ombudsman shall regularly monitor  
22 the functions of designees.

23 (2) The appointments of designees by the Foster Child Ombudsman shall be made in  
24 consultation with a local screening committee that may consist of but need not be limited  
25 to persons representing:

- 26 (a) The Department of Human Services.
- 27 (b) Elected officials.
- 28 (c) The Oregon Health Authority.
- 29 (d) Foster youth or former foster children.
- 30 (e) Court appointed special advocates.
- 31 (f) Local citizen review boards.

32 (3) To be appointed as a designee, a person must complete an initial training and attend  
33 quarterly training sessions that are approved by the Office of the Foster Child Ombudsman.

34 (4) Designees must sign a contract with the Office of the Foster Child Ombudsman that  
35 outlines the scope of their duties.

36 (5) The qualifications of designees shall include experience working with foster children  
37 and the ability to communicate well, to understand laws, rules and regulations and to be  
38 assertive and objective.

39 (6) Applicants who have relevant experience in social work, mental health, pediatrics or  
40 paralegal work shall be given preference in the appointment of designees.

41 **SECTION 7.** The Foster Child Ombudsman shall establish procedures to maintain the  
42 confidentiality of the records and files of foster children. The procedures must meet the  
43 following requirements:

44 (1) The Foster Child Ombudsman or designee may not disclose, except to law enforce-  
45 ment or state agencies, the identity of any foster child, or individual acting on behalf of a

1 foster child, without written consent signed by the foster child, the legal representative of  
2 the foster child or an individual legally authorized to act on behalf of the foster child. The  
3 written consent must specify to whom the disclosure may be made.

4 (2) The identity of any foster child or individual providing information on behalf of the  
5 foster child shall be confidential. If the complaint becomes the subject of judicial pro-  
6 ceedings, the investigative information held by the Foster Child Ombudsman or designee  
7 shall be disclosed for the purpose of the proceedings if requested by the court.

8 (3) The Foster Child Ombudsman and the Foster Parent Ombudsman may not exchange  
9 information concerning a foster child or foster parent without the written consent described  
10 in subsection (1) of this section.

11 **SECTION 8.** (1) The Foster Child Ombudsman Advisory Committee is established con-  
12 sisting of five members appointed by the Governor and confirmed by the Senate under ORS  
13 171.562 and 171.565.

14 (2) The term of office for each member is four years. Before the expiration of the term  
15 of a member, the Governor shall appoint a successor whose term begins July 1 next follow-  
16 ing. A member is eligible for reappointment. If there is a vacancy for any cause, the Gover-  
17 nor shall make an appointment to become immediately effective for the unexpired term.

18 (3) The members of the committee must:

19 (a) Be residents of this state;

20 (b) Include individuals who are or who represent current or former foster children, in-  
21 cluding racial and ethnic minorities;

22 (c) Have knowledge and interest in the problems of foster children; and

23 (d) Be representative of all areas of this state and the demographics of groups served by  
24 the Foster Child Ombudsman.

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

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

30 (6) The committee shall meet at least once each month at a place, day and hour deter-  
31 mined by the committee. The committee also shall meet at other times and places specified  
32 by the call of the chairperson or of a majority of the members of the committee. The com-  
33 mittee shall confer each month with the Foster Child Ombudsman.

34 (7) Members of the committee are not entitled to compensation or reimbursement for  
35 expenses and serve as volunteers.

36 **SECTION 9.** ORS 418.201 is amended to read:

37 418.201. It is the intent of the Legislative Assembly that each foster child have certain essential  
38 rights, including but not limited to the following:

39 (1) To have the ability to make oral and written complaints about care, placement or services  
40 that are unsatisfactory or inappropriate, and to be provided with information about a formal process  
41 for making complaints without fear of retaliation, harassment or punishment.

42 (2) To be notified of, and provided with transportation to, court hearings and reviews by local  
43 citizen review boards pertaining to the foster child's case when the matters to be considered or  
44 decided upon at the hearings and reviews are appropriate for the foster child, taking into account  
45 the age and developmental stage of the foster child.

1 (3) To be provided with written contact information of specific individuals whom the foster child  
2 may contact regarding complaints, concerns or violations of rights, that is updated as necessary and  
3 kept current.

4 (4) When a foster child is 14 years of age or older, to be provided with written information  
5 within 60 days of the date of any placement or any change in placement, regarding:

6 (a) How to establish a bank account in the foster child's name as allowed under state law;

7 (b) How to acquire a driver license as allowed under state law;

8 (c) How to remain in foster care after reaching 18 years of age;

9 (d) The availability of a tuition and fee waiver for a current or former foster child under ORS  
10 350.300;

11 (e) How to obtain a copy of the foster child's credit report, if any;

12 (f) How to obtain medical, dental, vision, mental health services or other treatment, including  
13 services and treatments available without parental consent under state law; and

14 (g) A transition toolkit, including a comprehensive transition plan.

15 (5) With respect to a foster child's rights under the federal and state constitutions, laws, in-  
16 cluding case law, rules and regulations:

17 (a) To receive a document setting forth such rights that is age-appropriate and developmentally  
18 appropriate within 60 days of the date of any placement or any change in placement;

19 (b) To have a document setting forth such rights that is age-appropriate and developmentally  
20 appropriate posted at the residences of all foster parents, child-caring agencies and independent  
21 resident facilities;

22 (c) To have an annual review of such rights that is age-appropriate and developmentally appro-  
23 priate while the foster child is in substitute care; and

24 (d) When the foster child is 14 years of age or older:

25 (A) To receive a document setting forth such rights that is age-appropriate and developmentally  
26 appropriate; and

27 (B) To acknowledge in writing receipt of the document and that the rights contained in the  
28 document were explained in an age-appropriate manner.

29 (6) To be provided with current and updated contact information for adults who are responsible  
30 for the care of the foster child and who are involved in the foster child's case, including but not  
31 limited to caseworkers, caseworker supervisors, attorneys, foster youth advocates and supporters,  
32 court appointed special advocates, local citizen review boards and employees of the Department of  
33 Human Services that provide certification of foster parents, child-caring agencies and independent  
34 resident facilities.

35 (7) To have a hotline [*phone*] **telephone** number that is available to the foster child at all times  
36 for the purposes of enabling the foster child to make complaints and assert grievances regarding the  
37 foster child's care, safety or well-being.

38 **(8) To be informed about the Office of the Foster Child Ombudsman and have access to**  
39 **the services described in section 5 of this 2017 Act.**

40  
41 **FOSTER PARENT OMBUDSMAN**

42  
43 **SECTION 10. (1) As used in this section:**

44 (a) **"Foster parent" means an individual who has a certificate to operate a foster home**  
45 **issued under ORS 418.635 and who is providing care to a foster child in the individual's home.**

1       **(b) “Service provider” means an individual, entity, agency or program that provides in-**  
2 **formation and services to foster parents, either directly or indirectly, including but not lim-**  
3 **ited to:**

4       **(A) Information and assistance in accessing parental and community support, services**  
5 **and resources;**

6       **(B) Respite care;**

7       **(C) Training; and**

8       **(D) Coaching, mentoring or counseling.**

9       **(2) The Office of the Foster Parent Ombudsman is established. The Governor shall ap-**  
10 **point the Foster Parent Ombudsman for a four-year term in consultation with the Foster**  
11 **Parent Ombudsman Advisory Committee. The Governor shall fill a vacancy within 60 days.**

12       **(3) The Foster Parent Ombudsman shall:**

13       **(a) Provide foster parents and individuals acting on their behalf with information re-**  
14 **garding the rights of foster parents set forth in ORS 418.648;**

15       **(b) Investigate a complaint made by or on behalf of a foster parent if the allegations**  
16 **contained in the complaint may adversely affect the health, safety, welfare or rights of the**  
17 **foster parent;**

18       **(c) Collaborate with the Department of Human Services, service providers, attorneys,**  
19 **foster parent advocates and supporters and local citizen review boards to obtain timely re-**  
20 **sponses to inquiries and requests and to resolve issues;**

21       **(d) Assist foster parents and individuals acting on their behalf in locating and accessing**  
22 **resources in the community and connecting with local service providers;**

23       **(e) Work with foster parents and individuals acting on their behalf to identify and re-**  
24 **commend processes for:**

25       **(A) A foster parent or individual acting on behalf of the foster parent to make complaints**  
26 **regarding interactions with the individuals and entities described in paragraph (c) of this**  
27 **subsection; and**

28       **(B) Engaging the participation of foster parents and individuals legally authorized to act**  
29 **on behalf of foster parents in general studies, conferences, inquiries or meetings related to**  
30 **foster care in this state;**

31       **(f) Organize, participate in or cooperate with persons and agencies in general studies,**  
32 **conferences, inquiries or meetings that may result in recommendations for improvements in**  
33 **the functioning of the foster care system in this state;**

34       **(g) Monitor the development and implementation of federal, state and local laws and**  
35 **policies that relate to the foster care system in this state;**

36       **(h) Collect and compile data necessary to prepare the report submitted to the Governor**  
37 **under ORS 182.500 and provide a copy of the report to the Governor’s Child Foster Care**  
38 **Advisory Commission established by section 1, chapter 76, Oregon Laws 2016;**

39       **(i) Provide information to state and local agencies about problems identified and reforms**  
40 **undertaken in the foster care system in this state and work closely with associations and**  
41 **citizen groups and with the state protection and advocacy system under ORS 192.517; and**

42       **(j) Establish and maintain the hotline telephone number for foster parents required by**  
43 **ORS 418.648 (12).**

44       **(4) The Foster Parent Ombudsman or a designee shall report to a foster parent and to**  
45 **an individual that makes a complaint on behalf of the foster parent the findings of the om-**

1 **budsman or designee in the investigation of the complaint and may make recommendations.**  
2 **If appropriate, the ombudsman or designee shall attempt to resolve the complaint using in-**  
3 **formal mediation or conflict resolution techniques.**

4 (5)(a) **A foster parent, or individual acting on behalf of a foster parent, who makes a**  
5 **complaint to the Foster Parent Ombudsman in good faith under this section, or who partic-**  
6 **ipates in an investigation of a complaint, may not be subjected to a penalty, sanction or re-**  
7 **striction in connection with the foster parent's certification to operate a foster home, or be**  
8 **denied any right, privilege or benefit, on account of making the complaint or participating**  
9 **in the investigation of the complaint.**

10 (b) **This subsection does not prohibit the department from taking action based on infor-**  
11 **mation obtained during the course of an investigation that demonstrates that the foster**  
12 **parent has failed to comply with requirements in this chapter.**

13 (6) **In order to encourage foster parents and individuals acting on behalf of foster parents**  
14 **to communicate with the Foster Parent Ombudsman, any foster parent or individual acting**  
15 **on behalf of a foster parent who makes a complaint to the ombudsman in good faith under**  
16 **this section, or who participates in an investigation of a complaint, shall have immunity from**  
17 **any civil or criminal liability that might otherwise be incurred or imposed on account of**  
18 **making the complaint or participating in the investigation of the complaint.**

19 (7) **The Foster Parent Ombudsman and each designee shall have access to records of any**  
20 **public agency, to the extent permitted by state and federal law that are necessary to carry**  
21 **out the duties of the ombudsman. The provisions of ORS 192.553 to 192.581 are not intended**  
22 **to limit the access of the ombudsman to the records of a foster parent or foster child, in-**  
23 **cluding medical records of the foster child as authorized by the foster child or individual le-**  
24 **gally authorized to act on behalf of the foster child, if needed to investigate a complaint.**

25 (8) **The Foster Parent Ombudsman and the department shall enter into a confidentiality**  
26 **agreement permitting the ombudsman and each designee to have access to electronic records**  
27 **that are necessary to carry out the duties of the ombudsman, if permitted by state and fed-**  
28 **eral law. The agreement must ensure that records obtained by the ombudsman from the**  
29 **department that are confidential, privileged or otherwise protected from disclosure are not**  
30 **further disclosed, except as permitted by state and federal law.**

31 (9) **A foster parent or individual legally authorized to act on behalf of the foster parent**  
32 **shall have the right to participate in planning any course of action to be taken on behalf of**  
33 **the foster parent by the Foster Parent Ombudsman or the designee.**

34 (10) **All state agencies shall cooperate with and assist the Foster Parent Ombudsman in**  
35 **the performance of the ombudsman's duties and functions.**

36 **SECTION 11. (1) The Foster Parent Ombudsman may appoint designees to serve as rep-**  
37 **resentatives of the ombudsman in local communities. The ombudsman shall regularly moni-**  
38 **tor the functions of designees.**

39 (2) **The appointments of designees by the Foster Parent Ombudsman shall be made in**  
40 **consultation with a local screening committee that may consist of but need not be limited**  
41 **to persons representing:**

- 42 (a) **The Department of Human Services.**
- 43 (b) **Elected officials.**
- 44 (c) **The Oregon Health Authority.**
- 45 (d) **Foster care providers.**

1 (e) Court appointed special advocates.

2 (f) Local citizen review boards.

3 (3) To be appointed as a designee, a person must complete an initial training and attend  
4 quarterly training sessions that are approved by the Office of the Foster Parent Ombudsman.

5 (4) Designees must sign a contract with the Office of the Foster Parent Ombudsman that  
6 outlines the scope of their duties.

7 (5) The qualifications of designees shall include experience working with foster care pro-  
8 viders and the ability to communicate well, to understand laws, rules and regulations and to  
9 be assertive and objective.

10 (6) Applicants who have relevant experience in social work, mental health, pediatrics or  
11 paralegal work shall be given preference in the appointment of designees.

12 **SECTION 12.** The Foster Parent Ombudsman shall establish procedures to maintain the  
13 confidentiality of the records and files of foster parents. The procedures must meet the fol-  
14 lowing requirements:

15 (1) The Foster Parent Ombudsman or designee may not disclose, except to law enforce-  
16 ment and state agencies, the identity of any foster parent, or individual acting on behalf of  
17 a foster parent, without written consent signed by the foster parent, the legal representative  
18 of the foster parent or an individual legally authorized to act on behalf of the foster parent.  
19 The written consent must specify to whom the disclosure may be made.

20 (2) The identity of any foster parent or individual providing information on behalf of the  
21 foster parent shall be confidential. If the complaint becomes the subject of judicial pro-  
22 ceedings, the investigative information held by the Foster Parent Ombudsman or designee  
23 shall be disclosed for the purpose of the proceedings if requested by the court.

24 (3) The Foster Parent Ombudsman and the Foster Child Ombudsman may not exchange  
25 information concerning a foster parent or foster child without the written consent described  
26 in subsection (1) of this section.

27 **SECTION 13.** (1) The Foster Parent Ombudsman Advisory Committee is established con-  
28 sisting of five members appointed by the Governor and confirmed by the Senate under ORS  
29 171.562 and 171.565.

30 (2) The term of office for each member is four years. Before the expiration of the term  
31 of a member, the Governor shall appoint a successor whose term begins July 1 next follow-  
32 ing. A member is eligible for reappointment. If there is a vacancy for any cause, the Gover-  
33 nor shall make an appointment to become immediately effective for the unexpired term.

34 (3) The members of the committee must:

35 (a) Be residents of this state;

36 (b) Include individuals who are or who represent current or former foster parents, in-  
37 cluding racial and ethnic minorities;

38 (c) Have knowledge and interest in the problems of foster parents; and

39 (d) Be representative of all areas of this state and the demographics of groups served by  
40 the Foster Parent Ombudsman.

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

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



1       **SECTION 15.** ORS 419B.005, as amended by section 39, chapter 106, Oregon Laws 2016, is  
2 amended to read:

3       419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

4       (1)(a) “Abuse” means:

5       (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child  
6 which has been caused by other than accidental means, including any injury which appears to be  
7 at variance with the explanation given of the injury.

8       (B) Any mental injury to a child, which shall include only observable and substantial impairment  
9 of the child’s mental or psychological ability to function caused by cruelty to the child, with due  
10 regard to the culture of the child.

11       (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
12 tration and incest, as those acts are described in ORS chapter 163.

13       (D) Sexual abuse, as described in ORS chapter 163.

14       (E) Sexual exploitation, including but not limited to:

15       (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any  
16 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage  
17 in the performing for people to observe or the photographing, filming, tape recording or other ex-  
18 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or  
19 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-  
20 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or  
21 which is designed to serve educational or other legitimate purposes; and

22       (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in  
23 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as  
24 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

25       (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to  
26 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
27 welfare of the child.

28       (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm  
29 to the child’s health or welfare.

30       (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

31       (I) Permitting a person under 18 years of age to enter or remain in or upon premises where  
32 methamphetamines are being manufactured.

33       (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child  
34 to a substantial risk of harm to the child’s health or safety.

35       (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the  
36 conditions described in paragraph (a) of this subsection.

37       (2) “Child” means an unmarried person who:

38       (a) Is under 18 years of age; or

39       (b) Is under 21 years of age and residing in or receiving care or services at a child-caring  
40 agency as that term is defined in ORS 418.205.

41       (3) “Higher education institution” means:

42       (a) A community college as defined in ORS 341.005;

43       (b) A public university listed in ORS 352.002;

44       (c) The Oregon Health and Science University; and

45       (d) A private institution of higher education located in Oregon.

- 1 (4) “Law enforcement agency” means:
- 2 (a) A city or municipal police department.
- 3 (b) A county sheriff’s office.
- 4 (c) The Oregon State Police.
- 5 (d) A police department established by a university under ORS 352.121 or 353.125.
- 6 (e) A county juvenile department.
- 7 (5) “Public or private official” means:
- 8 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 9 including any intern or resident.
- 10 (b) Dentist.
- 11 (c) School employee, including an employee of a higher education institution.
- 12 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
- 13 or employee of an in-home health service.
- 14 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 15 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
- 16 health department, a community mental health program, a community developmental disabilities
- 17 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
- 18 or an alcohol and drug treatment program.
- 19 (f) Peace officer.
- 20 (g) Psychologist.
- 21 (h) Member of the clergy.
- 22 (i) Regulated social worker.
- 23 (j) Optometrist.
- 24 (k) Chiropractor.
- 25 (L) Certified provider of foster care, or an employee thereof.
- 26 (m) Attorney.
- 27 (n) Licensed professional counselor.
- 28 (o) Licensed marriage and family therapist.
- 29 (p) Firefighter or emergency medical services provider.
- 30 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 31 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 32 (s) Member of the Legislative Assembly.
- 33 (t) Physical, speech or occupational therapist.
- 34 (u) Audiologist.
- 35 (v) Speech-language pathologist.
- 36 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 37 gations or discipline by the commission.
- 38 (x) Pharmacist.
- 39 (y) An operator of a preschool recorded program under ORS 329A.255.
- 40 (z) An operator of a school-age recorded program under ORS 329A.257.
- 41 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 42 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 43 109.056.
- 44 (bb) Employee of a public or private organization providing child-related services or activities:
- 45 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day

1 camps, survival camps or groups, centers or camps that are operated under the guidance, super-  
2 vision or auspices of religious, public or private educational systems or community service organ-  
3 izations; and

4 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide  
5 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-  
6 ficking.

7 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,  
8 if compensated and if the athlete is a child.

9 (dd) Personal support worker, as defined by rule adopted by the Home Care Commission.

10 (ee) Home care worker, as defined in ORS 410.600.

11 **(ff) The Foster Child Ombudsman or a designee appointed under section 5 or 6 of this 2017**  
12 **Act.**

13 **(gg) The Foster Parent Ombudsman or a designee appointed under section 10 or 11 of this**  
14 **2017 Act.**

15  
16 **OFFICE OF THE LONG TERM CARE OMBUDSMAN**

17  
18 **SECTION 16.** ORS 441.402 is amended to read:

19 441.402. As used in ORS 441.402 to 441.419:

20 (1) **“Administrative action” means any action, inaction or decision, by an owner, em-**  
21 **ployee or agent of a long term care facility or by a public agency, that affects the services**  
22 **to or quality of life of residents of the long term care facility.**

23 [(1)] (2) “Designee” means an individual appointed by the Long Term Care Ombudsman to serve  
24 as a representative in order to carry out the purpose of ORS 441.402 to 441.419.

25 [(2) “Residential facility” includes a:]

26 [(a) Long term care facility;]

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

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

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

30 [(c) Licensed adult foster home as defined in ORS 443.705;]

31 [(d) Developmental disability child foster home, as defined in ORS 443.830, that is certified by the  
32 Department of Human Services; and]

33 [(e) Continuing care retirement community as defined in ORS 101.020.]

34 (3) **“Long term care facility” means:**

35 (a) **A licensed skilled nursing facility;**

36 (b) **An intermediate care facility as defined in rules adopted under ORS 442.015;**

37 (c) **An adult foster home with residents over 60 years of age;**

38 (d) **A residential care facility as defined in ORS 443.400; and**

39 (e) **A continuing care retirement community as defined in ORS 101.020.**

40 **SECTION 17.** ORS 441.403 is amended to read:

41 441.403. (1) The Office of the Long Term Care Ombudsman is established. The Long Term Care  
42 Ombudsman shall function separately and independently from any other state agency. The Governor  
43 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees  
44 nominated by the [Residential Facilities] **Long Term Care Ombudsman** Advisory Committee es-  
45 tablished under ORS 441.416. The appointment of the Long Term Care Ombudsman is subject to

1 Senate confirmation under ORS 171.562 and 171.565. A vacancy shall be filled within 60 days in the  
2 same manner as an appointment is made.

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

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

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

8 (b) [*Physical or behavioral*] Health care;

9 (c) Working with community programs;

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

11 (e) Working with health care providers;

12 (f) Working with and involvement in volunteer programs; and

13 (g) Administrative and managerial experience.

14 **SECTION 18.** ORS 441.406 is amended to read:

15 441.406. [(1)] The Office of the Long Term Care Ombudsman shall carry out the following duties:

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

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

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

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

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

29 [(f)] (6) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of oper-  
30 ation.

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

36 [(h)(A)] *Identify and coordinate programs, services and other assistance for persons receiving public*  
37 *guardian and conservator services under ORS 125.675 to 125.687, that are available statewide;*

38 [(B)] *Contract with qualified individuals and entities to provide programs, services and assistance*  
39 *to persons receiving public guardian and conservator services under ORS 125.675 to 125.687 who are*  
40 *located in areas of this state where such programs, services and other assistance are inadequate or*  
41 *nonexistent; and]*

42 [(C)] (8) Contract with the state protection and advocacy system described in ORS 192.517 (1)  
43 to provide services and assistance to persons who are prospective or current residents of a mental  
44 health treatment facility [*or of a residential facility for individuals with developmental disabilities*]  
45 when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

1        *[(i)]* **(9)** Appoint designees to serve as local representatives of the office in various districts of  
2 the state and regularly monitor their functions.

3        *[(j)]* **(10)** Specify qualifications and duties of designees.

4        *[(k)]* **(11)** Adopt rules necessary for carrying out ORS 441.402 to ~~*[441.414]*~~ **441.419**, after consul-  
5 tation with the *[Residential Facilities]* **Long Term Care Ombudsman** Advisory Committee.

6        **(12) Collect and compile data necessary to prepare the report submitted to the Governor**  
7 **under ORS 182.500.**

8        *[(L)]* **(13)** Provide periodically, or at least annually, a report to the *[Governor, authority,]* de-  
9 partment and **the** Legislative Assembly.

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

11        *[(n) Supervise, monitor, advise and support the Oregon Public Guardian and Conservator ap-  
12 pointed under ORS 125.678.]*

13        *[(2)]* **(14)** At least quarterly, *[the Oregon Health Authority and]* the Department of Human Ser-  
14 vices shall provide the Long Term Care Ombudsman with a list of the number of licensed or certified  
15 beds in each residential facility for which the ombudsman has responsibilities under this section.

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

19        **SECTION 19.** ORS 441.407 is amended to read:

20        441.407. The Long Term Care Ombudsman shall establish procedures to maintain the  
21 confidentiality of the records and files of residents of *[residential]* **long term care** facilities. These  
22 procedures must meet the following requirements:

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

26        (2) The identity of any complainant or resident on whose behalf a complaint is made, or indi-  
27 vidual providing information on behalf of the complainant or the resident, shall be confidential. If  
28 the complaint becomes the subject of judicial proceedings, the investigative information held by the  
29 ombudsman or designee shall be disclosed for the purpose of the proceedings if requested by the  
30 court.

31        **SECTION 20.** ORS 441.408 is amended to read:

32        441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry  
33 into *[residential]* **long term care** facilities at any time considered necessary and reasonable by the  
34 ombudsman or the designee for the purpose of:

35        (a) Investigating and resolving complaints made by residents or made on their behalf;

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

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

38        (d) Interviewing employees or agents of the facility;

39        (e) Consulting regularly with the facility administration; and

40        (f) Providing services authorized by law or by rule.

41        (2) The Long Term Care Ombudsman shall have access to any resident's records, and to records  
42 of any public agency necessary to **carry out** the duties of the ombudsman, including records on  
43 patient abuse complaints made pursuant to ORS ~~*[430.735 to 430.765,]*~~ 441.630 to 441.680 and 441.995.  
44 The provisions of ORS 192.553 to 192.581 are not intended to limit the access of the Long Term Care  
45 Ombudsman to medical records of residents of *[residential]* **long term care** facilities. Designees may

1 have access to individual resident's records, including medical records as authorized by the resident  
2 or resident's legal representative, if needed to investigate a complaint.

3 **(3) The Long Term Care Ombudsman shall enter into confidentiality agreements with the**  
4 **Department of Human Services and with the Oregon Health Authority permitting the om-**  
5 **budsman and each designee to have access to electronic records of the department and the**  
6 **authority that are necessary to carry out the duties of the ombudsman, if permitted by state**  
7 **and federal law. The agreement must ensure that records obtained by the ombudsman from**  
8 **the department or the authority that are confidential, privileged or otherwise protected from**  
9 **disclosure are not further disclosed, except as permitted by state and federal law.**

10 [(3)] (4) Entry and investigation authorized by this section shall be done in a manner that does  
11 not disrupt significantly the providing of nursing, residential or other personal care or treatment to  
12 residents.

13 [(4)] (5) The **Long Term Care** Ombudsman or the designee must show identification to the  
14 person in charge of the facility. The resident shall have the right to refuse to communicate with the  
15 ombudsman or the designee. The refusal shall be made directly to the ombudsman or the designee  
16 and not through an intermediary.

17 [(5)] (6) The resident shall have the right to participate in planning any course of action to be  
18 taken on behalf of the resident by the **Long Term Care** Ombudsman or the designee.

19 **SECTION 21.** ORS 441.409 is amended to read:

20 441.409. (1) Following an investigation, the Long Term Care Ombudsman or the designee shall  
21 report opinions or recommendations to the party or parties affected and, if appropriate, shall at-  
22 tempt to resolve the complaint using informal techniques of mediation, conciliation and persuasion.  
23 Complaints of conditions adversely affecting residents of [*residential*] **long term care** facilities, or  
24 complaints of conditions threatening the safety or well-being of residents that cannot be resolved in  
25 the manner described in this section, shall be referred to an appropriate state agency.

26 (2) Programs that promote the safety or emotional or physical well-being of residents of [*resi-*  
27 *dential*] **long term care** facilities shall be promoted and publicized by the **Long Term Care** Om-  
28 budsman and the designees.

29 **SECTION 22.** ORS 441.411 is amended to read:

30 441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*residential*]  
31 **long term care** facility in this state a written notice describing the procedures to follow in making  
32 a complaint, including the address and telephone number of the ombudsman and local designee, if  
33 any, and a poster describing the **Office of the** Long Term Care Ombudsman [*Program*] and providing  
34 contact information.

35 (2) The administrator of each [*residential*] **long term care** facility shall post the written notice  
36 and poster required by this section in conspicuous places in the facility in accordance with proce-  
37 dures provided by the **Long Term Care** Ombudsman and shall give the written notice to each res-  
38 ident and legally appointed guardian, if any.

39 **SECTION 23.** ORS 441.412 is amended to read:

40 441.412. (1) Any employee or agent of a [*residential*] **long term care** facility acting in good faith  
41 in discussing resident care pursuant to ORS 441.408 shall have immunity from any civil liability that  
42 might otherwise be incurred or imposed with respect to the making of such report.

43 (2) Any employee or agent who makes a report pursuant to ORS 441.408 may not be subjected  
44 to any retaliation by any official or other employee of a [*residential*] **long term care** facility solely  
45 for making a report, including but not limited to restriction of otherwise lawful access to the facility

1 or to any resident of the facility, or, if an employee, to dismissal or harassment.

2 (3) The Long Term Care Ombudsman or the designee acting in good faith in discussing resident  
3 care pursuant to ORS 441.408 shall have immunity from any civil liability, that might otherwise be  
4 incurred or imposed with respect to the discussion.

5 **SECTION 24.** ORS 441.413 is amended to read:

6 441.413. (1) The appointments of designees shall be made in consultation with a local screening  
7 committee that may consist of but not be limited to persons representing:

8 (a) The area agency on aging.

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

10 (c) The local health department.

11 (d) Senior citizens groups in the area.

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

13 (f) Local elected officials.

14 *[(g) The community mental health program director or local mental health authority.]*

15 *[(h) The community developmental disabilities program director.]*

16 *[(i) Representatives from the Oregon Health Authority.]*

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

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

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

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

33 (6) The contract shall include statements that the purpose of the **Office of the Long Term Care**  
34 Ombudsman *[Program]* is to:

35 (a) Promote rapport and trust between the residents and staff of the *[residential]* **long term care**  
36 facilities and **the Long Term Care Ombudsman and designees;**

37 (b) Assist residents with participating more actively in determining the delivery of services at  
38 the facilities;

39 (c) Serve as an educational resource;

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

42 (e) Ensure equitable resolution of problems.

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

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

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

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

2 (C) Visit individual residents and resident councils.

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

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

5 (d) Keep residents and staff informed of the **Office of the** Long Term Care Ombudsman [*Pro-*  
6 *gram*].

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

9 (f) Perform other related duties as specified.

10 **SECTION 25.** ORS 441.414 is amended to read:

11 441.414. Nothing in ORS 441.402 to 441.419 shall affect the right of residents of a [*residential*]  
12 **long term care** facility to see visitors of their choice.

13 **SECTION 26.** ORS 441.416 is amended to read:

14 441.416. (1) There is established a [*Residential Facilities Advisory Committee of 11 members to*  
15 *be appointed in the following manner:*]

16 [*(a) One person appointed by the Speaker of the House of Representatives;*]

17 [*(b) One person appointed by the President of the Senate;*]

18 [*(c) One person appointed by the House Minority Leader;*]

19 [*(d) One person appointed by the Senate Minority Leader;*]

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

23 [*(f) Four persons appointed by the Governor, two of whom must have expertise in the provision of*  
24 *guardianship, conservatorship and other fiduciary services for persons with inadequate resources.*]

25 **Long Term Care Ombudsman Advisory Committee consisting of five members appointed by**  
26 **the Governor, two of whom must be selected by the Governor from a list of four names**  
27 **submitted by organizations for seniors.**

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

30 (3) The term of office of each member is four years. Before the expiration of the term of a  
31 member, the [*appointing authority*] **Governor** shall appoint a successor whose term begins on July  
32 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the  
33 [*appointing authority*] **Governor** shall make an appointment to become immediately effective for the  
34 unexpired term.

35 (4) The members of the committee must be residents of this state who are broadly represen-  
36 tative, to the extent possible, of persons [*residing in residential facilities*] **over 60 years of age**, in-  
37 cluding members of racial and ethnic minorities, who have knowledge and interest in the problems  
38 of **seniors** [*persons residing in residential facilities,*] and who are representative of all areas of this  
39 state [*and the demographics of groups served by the Long Term Care Ombudsman*].

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

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

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

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

7 (9) A member of the committee is **not** entitled to compensation [*and expenses as provided in ORS*  
8 *292.495*] **or reimbursement for expenses and serves as a volunteer on the committee.**

9 **SECTION 27.** ORS 441.417 is amended to read:

10 441.417. The [*Residential Facilities*] **Long Term Care Ombudsman** Advisory Committee shall:

11 (1) Monitor the **Office of the** Long Term Care Ombudsman [*Program*].

12 (2) Advise the Governor and the Legislative Assembly on the **Office of the** Long Term Care  
13 Ombudsman [*Program*].

14 (3) Nominate, after interviews and according to prescribed criteria, three persons to fill the  
15 Long Term Care Ombudsman position or to fill a vacancy in the position.

16 **SECTION 28.** ORS 441.418 is amended to read:

17 441.418. (1) A [*residential*] **long term care** facility that files a complaint against a designee ap-  
18 pointed under ORS 441.413 and objects to the action of the Long Term Care Ombudsman in resolving  
19 the complaint may appeal the ombudsman's action to a panel of the [*Residential Facilities*] **Long**  
20 **Term Care Ombudsman** Advisory Committee.

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

26 (3) If the committee disagrees with the action of the **Long Term Care** Ombudsman, the com-  
27 mittee may refer the resolution back to the ombudsman with instructions consistent with the federal  
28 Older Americans Act or other applicable federal law to conform the ombudsman's action in the  
29 matter to the recommendations of the committee.

30 **SECTION 29.** ORS 410.550 is amended to read:

31 410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is  
32 created, to consist of [*12*] **13** members. Appointed members shall be residents of [*the State of*  
33 *Oregon*] **this state** and representative of the geographic locations of all long term care facilities and  
34 [*community-based care*] **residential** facilities in this state. The members shall include:

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

36 (b) **The Residential Facilities Ombudsman, who shall serve as a standing member of the**  
37 **council;**

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

40 [(c)] (d) A representative of the Oregon Disabilities Commission, to be appointed by the com-  
41 mission;

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

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



1 (A) A residential training facility, as defined in ORS 443.400.

2 (B) A residential training home, as defined in ORS 443.400.

3 (C) A residential treatment facility, as defined in ORS 443.400.

4 (D) A residential treatment home, as defined in ORS 443.400.

5 (E) A licensed adult foster home, as defined in ORS 443.705, that provides care to persons  
6 with mental illness or developmental disabilities.

7 (F) A developmental disability child foster home, as defined in ORS 443.830.

8 (b) "Residential facility" does not include a:

9 (A) Facility housing persons committed under ORS 161.327; or

10 (B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treat-  
11 ment.

12 **SECTION 31.** (1) The Office of the Residential Facilities Ombudsman is established in the  
13 Office of Oregon Ombudsmen. The Governor shall appoint the Residential Facilities Om-  
14 budsman for a four-year term from a list of three nominees nominated by the Residential  
15 Facilities Ombudsman Advisory Committee established under section 32 of this 2017 Act. A  
16 vacancy shall be filled within 60 days in the same manner as an appointment is made.

17 (2) The Residential Facilities Ombudsman may be removed for just cause, upon recom-  
18 mendation to the Governor by the Residential Facilities Ombudsman Advisory Committee.

19 (3) The Residential Facilities Ombudsman shall have background and experience in the  
20 following areas:

21 (a) The fields of mental health or intellectual or developmental disabilities and behavioral  
22 health care;

23 (b) Working with community programs;

24 (c) Knowledge of and experience with residential facility regulatory and policy issues;

25 (d) Working with and involvement in volunteer programs; and

26 (e) Administrative and managerial experience.

27 (4) The Residential Facilities Ombudsman or a designee shall:

28 (a) Provide residents, families of residents, guardians, community members and admin-  
29 istrators and staff of residential facilities with information regarding the rights of residents  
30 as set forth in ORS 427.107 and 430.210, and any other applicable rights of residents.

31 (b) Widely publicize the services, purpose and mode of operation of the Office of the  
32 Residential Facilities Ombudsman.

33 (c) Identify, investigate and resolve complaints that are made by or on behalf of a resi-  
34 dent, in accordance with section 34 of this 2017 Act, concerning an administrative action.

35 (d) Provide services to residents to assist them in protecting their health, safety, welfare  
36 and rights.

37 (e) Ensure that residents have regular, timely, private and unimpeded access to Resi-  
38 dential Facilities Ombudsman services and that a resident, and an individual acting on behalf  
39 of a resident, who files a complaint receives a timely response to the complaint from the  
40 ombudsman or designee.

41 (f) Represent the interests of residents before government agencies and seek adminis-  
42 trative, legal or other appropriate remedies to protect the health, safety, welfare and rights  
43 of residents.

44 (g) Analyze, comment on and monitor the development and implementation of federal,  
45 state and local laws and other governmental policies pertaining to the health, safety, welfare

1 and rights of residents.

2 (h) Recommend any changes to state or local laws to improve the health, safety and  
3 welfare of residents.

4 (i) Facilitate public comment on laws and policies that affect the health, safety and wel-  
5 fare of residents.

6 (j) Train designees.

7 (k) Promote the development of organizations to advocate on behalf of residents of resi-  
8 dential facilities.

9 (L) Work closely with cooperative associations and citizen groups in this state and the  
10 state protection and advocacy system under ORS 192.517.

11 (m) To the extent practicable, assist residents who move from a residential facility to a  
12 home care setting.

13 (n) Assist residents, and individuals acting on their behalf, in locating and accessing re-  
14 sources in the community and in connecting with local service providers.

15 (o) Undertake, participate in or cooperate with residents, other persons and agencies in  
16 such conferences, inquiries, meetings or studies as may lead to improvements in the func-  
17 tioning of residential facilities.

18 (p) Make recommendations for improvements in the functioning of the residential facility  
19 system in this state.

20 (q) Collaborate with the Oregon Health Authority, the Department of Human Services  
21 and any other appropriate agencies and organizations to establish a statewide system to  
22 collect and analyze information on complaints and conditions in residential facilities for the  
23 purpose of publicizing improvements and resolving significant problems for residents.

24 (r) Work with residents to identify and recommend processes for making complaints  
25 about service providers and entities.

26 (s) Provide information to public agencies about the problems of residents.

27 (t) Collect and compile data necessary to prepare the report submitted to the Governor  
28 under ORS 182.500.

29 (u) Adopt rules necessary for carrying out sections 30 to 39 of this 2017 Act, in accord-  
30 ance with ORS chapter 183, in consultation with Residential Facilities Ombudsman Advisory  
31 Committee.

32 (5) The Residential Facilities Ombudsman shall contract with the state protection and  
33 advocacy system described in ORS 192.517 (1) to provide services and assistance to persons  
34 who are prospective or current residents of a residential facility for individuals with devel-  
35 opmental disabilities when the system has received a notice regarding the person pursuant  
36 to ORS 125.060 (7)(c) or (8)(c).

37 (6) The authority and the department shall provide the Residential Facilities Ombudsman  
38 and the designees monthly, in a format specified by the ombudsman, demographic informa-  
39 tion about each resident in the residential facilities for which the ombudsman or designee  
40 has responsibilities under this section.

41 (7) All state agencies and service providers shall cooperate with and assist the Residen-  
42 tial Facilities Ombudsman and designees in the performance of the ombudsman's duties and  
43 functions.

44 **SECTION 32.** (1) The Residential Facilities Ombudsman Advisory Committee is estab-  
45 lished consisting of five members appointed by the Governor, one of whom must be selected

1 by the Governor from a list of four names submitted by an organization for persons with  
2 mental illness and one of whom must be selected by the Governor from a list of four names  
3 submitted by the Oregon Council on Developmental Disabilities. Members are subject to  
4 confirmation by the Senate under ORS 171.562 and 171.565.

5 (2) The term of office for each member is four years. Before the expiration of the term  
6 of a member, the Governor shall appoint a successor whose term begins July 1 next follow-  
7 ing. A member is eligible for reappointment. If there is a vacancy for any cause, the Gover-  
8 nor shall make an appointment to become immediately effective for the unexpired term.

9 (3) The members of the committee must be residents of this state who are broadly rep-  
10 resentative of persons residing in residential facilities, including members of racial and eth-  
11 nic minorities, who have knowledge and interest in the problems of individuals residing in  
12 residential facilities and who are representative of all areas of this state and the demo-  
13 graphics of groups served by the Residential Facilities Ombudsman.

14 (4) A member of the committee may not have a financial or fiduciary interest in resi-  
15 dential facilities or service providers, or involvement in the licensing or certification of resi-  
16 dential facilities or service providers.

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

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

22 (7) The committee shall meet at least once each month at a place, day and hour deter-  
23 mined by the committee. The committee also shall meet at other times and places specified  
24 by the call of the chairperson or of a majority of the members of the committee. The com-  
25 mittee shall confer each month with the Residential Facilities Ombudsman.

26 (8) Members of the committee are not entitled to compensation or reimbursement for  
27 expenses and serve as volunteers on the committee.

28 **SECTION 33.** (1) The Residential Facilities Ombudsman and each designee shall have:

29 (a) Private and unimpeded access to residential facilities and residents at any time con-  
30 sidered necessary and reasonable by the ombudsman or the designee for the purpose of:

31 (A) Investigating and resolving complaints made by or on behalf of residents, including  
32 by subpoenaing any person to appear and give sworn testimony or to produce documentary  
33 or other evidence that is reasonably material to the matter under investigation;

34 (B) Offering the services of the ombudsman or the designee to any resident, in private;

35 (C) Interviewing residents, with their consent, in private;

36 (D) Interviewing employees or agents of the facility;

37 (E) Consulting regularly with the facility administration; and

38 (F) Providing other services authorized by law or by rule.

39 (b) Notwithstanding ORS 192.553 to 192.581, access to all of the following if necessary to  
40 investigate a complaint:

41 (A) Residents' records, including medical records, with the consent of a resident or a  
42 resident's representative.

43 (B) For a resident who is unable to communicate consent and the resident's legal repre-  
44 sentative denies consent, access to the resident's records, including medical records, without  
45 consent if the ombudsman has reasonable cause to believe that the legal representative is

1 not acting in the resident's best interests.

2 (C) Records of any public agency to the extent permitted by state and federal law, in-  
3 cluding abuse reports maintained under ORS 430.757.

4 (c) Access to, upon request, copies of all licensing and certification records, including  
5 records of corrective actions, maintained by the Department of Human Services or the  
6 Oregon Health Authority with respect to residential facilities.

7 (d) Access to the administrative records, policies and documents of residential facilities  
8 to which residents or the general public has access.

9 (2) The Residential Facilities Ombudsman shall:

10 (a) Conduct each investigation in a manner that does not significantly disrupt the pro-  
11 vision of residential care or treatment to residents.

12 (b) Show identification to the person in charge of a facility prior to entering the facility.

13 (3) The Residential Facilities Ombudsman shall enter into confidentiality agreements with  
14 the department and with the authority permitting the ombudsman and each designee to have  
15 access to electronic records of the department and the authority that are necessary to carry  
16 out the duties of the ombudsman. The agreement shall ensure that records obtained by the  
17 ombudsman from the department or the authority that are confidential, privileged or other-  
18 wise protected from disclosure are not further disclosed, except as permitted by state and  
19 federal law.

20 **SECTION 34.** (1) If a complaint is made on behalf of a resident who has limited or no  
21 decision-making capacity and is unable to communicate consent for the Residential Facilities  
22 Ombudsman to investigate the complaint, and:

23 (a) The resident has no known legal representative:

24 (A) The ombudsman shall seek to discern the outcome that the resident desires and shall  
25 work to accomplish that outcome; or

26 (B) If the ombudsman is unable to discern the resident's desired outcome, it shall be  
27 assumed that the resident desires to have the resident's health, safety, welfare and rights  
28 protected; or

29 (b) The resident has a legal representative who refuses to consent to the investigation,  
30 the ombudsman may proceed without consent if the ombudsman has reasonable cause to  
31 believe that it is in the resident's best interests.

32 (2) A resident shall have the right to refuse to communicate with the ombudsman or the  
33 designee. The refusal shall be made directly to the ombudsman or the designee and not  
34 through an intermediary.

35 (3) Following an investigation of a complaint, the Residential Facilities Ombudsman or  
36 the designee shall report the findings and conclusions to the resident who made the com-  
37 plaint and to a complainant acting on behalf of a resident. If the ombudsman or designee  
38 finds conditions threatening the health, safety or welfare of a resident that cannot be re-  
39 solved informally, the ombudsman or designee shall refer the findings to the Department of  
40 Human Services, the Oregon Health Authority or law enforcement officials.

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

43 (5) A resident or an individual who makes a complaint to the Residential Facilities Om-  
44 budsman in good faith under this section, or who participates in an investigation of a com-  
45 plaint, may not be subjected to a penalty, sanction or restriction or be denied any right,

1 privilege or benefit, on account of making the complaint or participating in the investigation  
2 of the complaint.

3 (6) The Department of Human Services shall prohibit retaliation or reprisals by a resi-  
4 dential facility or other entity with respect to any resident, employee or other person who  
5 files a complaint, provides information or otherwise cooperates with the Residential Facilities  
6 Ombudsman or a designee and shall provide by rule for appropriate sanctions with respect  
7 to the retaliation and reprisals.

8 (7) In order to encourage residents and individuals acting on behalf of residents to com-  
9 municate with the Residential Facilities Ombudsman, any resident or individual acting on  
10 behalf of a resident who makes a complaint to the ombudsman in good faith under this sec-  
11 tion, or who participates in an investigation of a complaint, shall have immunity from any  
12 civil or criminal liability that might otherwise be incurred or imposed on account of making  
13 the complaint or participating in the investigation of the complaint.

14 SECTION 35. (1) The Residential Facilities Ombudsman shall prepare and distribute to  
15 each residential facility in this state a written notice describing the procedures to follow in  
16 making a complaint, including the address and telephone number of the ombudsman and a  
17 poster describing the Office of the Residential Facilities Ombudsman and providing contact  
18 information. The Department of Human Services shall facilitate the distribution of informa-  
19 tion regarding the office to residents, providers and the public.

20 (2) The administrator of each residential facility shall post the written notice and poster  
21 required by this section in conspicuous places in the facility in accordance with procedures  
22 provided by the Residential Facilities Ombudsman and shall give the written notice to each  
23 resident and legal representative, if any, at least annually during the care planning process.

24 SECTION 36. The Residential Facilities Ombudsman shall establish procedures to main-  
25 tain the confidentiality of the records and files of residents. The procedures must meet the  
26 following requirements:

27 (1) The Residential Facilities Ombudsman or a designee may not disclose, except to state  
28 agencies or law enforcement, the identity of any resident or individual acting on behalf of a  
29 resident without the consent of the resident or the legal representative of the resident.

30 (2) The identity of any resident or individual providing information on behalf of the resi-  
31 dent shall be confidential. If a complaint becomes the subject of judicial proceedings, the in-  
32 vestigative information held by the Residential Facilities Ombudsman or the designee shall  
33 be disclosed for the purpose of the proceedings if requested by the court.

34 SECTION 37. The Residential Facilities Ombudsman appointed under section 31 of this  
35 2017 Act may solicit and accept, gifts, grants and donations from public and private sources  
36 for the purpose of carrying out sections 30 to 39 of this 2017 Act and the moneys shall be  
37 deposited in the Office of Oregon Ombudsmen Account established under ORS 441.419.

38 SECTION 38. The Residential Facilities Ombudsman shall establish procedures to main-  
39 tain the confidentiality of the records and files of residents. The procedures must meet the  
40 following requirements:

41 (1) The Residential Facilities Ombudsman or a designee may not disclose, except to state  
42 agencies or law enforcement, the identity of any resident or individual acting on behalf of a  
43 resident without the consent of the resident, communicated in any manner the resident is  
44 able to communicate, legal representative of the resident or the individual legally authorized  
45 to act on behalf of the resident.



1 lowing. A member is eligible for reappointment. If there is a vacancy for any cause, the  
2 Governor shall make an appointment to become immediately effective for the unexpired  
3 term.

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

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

9 (6) The committee shall meet at least once each month at a place, day and hour deter-  
10 mined by the committee. The committee also shall meet at other times and places specified  
11 by the call of the chairperson or of a majority of the members of the committee. The com-  
12 mittee shall confer each month with the Oregon Public Guardian. All meetings are subject  
13 to ORS 192.610 to 192.690.

14 (7) Members of the committee are not entitled to compensation or reimbursement for  
15 expenses and serve as volunteers on the committee.

16 **SECTION 45.** (1) The Oregon Public Guardian Fund is established in the State Treasury,  
17 separate and distinct from the General Fund. Interest earned by the Oregon Public Guardian  
18 Fund shall be credited to the fund. The fund consists of:

19 (a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assem-  
20 bly;

21 (b) Moneys received from federal, state or local sources;

22 (c) Amounts donated to the fund;

23 (d) Investment earnings received on moneys in the fund; and

24 (e) Other amounts deposited in the fund from any source.

25 (2) Moneys in the fund are continuously appropriated to the Oregon Public Guardian for  
26 the purposes of ORS 125.675 to 125.687.

27 (3) Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to  
28 293.857.

29 (4) Moneys in the fund may be used by the Oregon Public Guardian for administrative  
30 costs and expenses of the Oregon Public Guardian in performing the duties and functions  
31 under ORS 125.675 to 125.687.

32 **SECTION 46.** (1) The Oregon Public Guardian Protected Person Trust Account is estab-  
33 lished in the State Treasury separate and distinct from the General Fund and the Oregon  
34 Public Guardian Fund. Moneys in the Oregon Public Guardian Protected Person Trust Ac-  
35 count consists of moneys received on behalf of persons for whom the Oregon Public Guardian  
36 has been appointed as a guardian or conservator. All moneys in the account are continuously  
37 appropriated to the Oregon Public Guardian to be used for the benefit of a person for whom  
38 the Oregon Public Guardian has been appointed as a guardian or conservator and on whose  
39 behalf the Oregon Public Guardian has received moneys.

40 (2) The Oregon Public Guardian shall administer the trust account:

41 (a) For the benefit of persons for whom the Oregon Public Guardian has been appointed  
42 a guardian or conservator and on whose behalf the Oregon Public Guardian has received  
43 moneys; and

44 (b) In accordance with the provisions of this chapter or as ordered by the court.

45 (3) The Oregon Public Guardian may establish subaccounts within the Oregon Public

1 **Guardian Protected Person Trust Account when the Oregon Public Guardian determines that**  
2 **subaccounts are necessary or desirable. Interest earned by the account or subaccounts, if**  
3 **any, shall accrue to the benefit of the account or subaccounts.**

4 **SECTION 47. The Oregon Public Guardian shall establish procedures to maintain the**  
5 **confidentiality of the records and files related to guardianship or conservator services.**

6 **SECTION 48.** ORS 125.675 is amended to read:

7 125.675. For purposes of ORS 125.675 to 125.687:

8 (1) “Client” means a person who receives public guardian and conservator services from the  
9 Oregon Public Guardian [*and Conservator*].

10 (2) “Deputy public guardian [*and conservator*]” means a person who is employed by or under  
11 contract with the Oregon Public Guardian [*and Conservator*], who is certified by the Oregon Public  
12 Guardian [*and Conservator*] and who provides services as a fiduciary [*appointed by the court to cli-*  
13 *ents*] under ORS 125.675 to 125.687.

14 (3) “Public guardian and conservator services” means services, including but not limited to in-  
15 formation, assistance and services as a court-appointed fiduciary in guardianship or conservatorship  
16 proceedings that are provided by deputy public guardians [*and conservators*], volunteers and staff  
17 under the supervision and control of the Oregon Public Guardian [*and Conservator*].

18 **SECTION 49.** ORS 125.678 is amended to read:

19 125.678. (1) The [*Long Term Care Ombudsman appointed under ORS 441.403, in consultation with*  
20 *the Residential Facilities Advisory Committee,*] **Governor** shall appoint the Oregon Public Guardian  
21 [*and Conservator in the office of the Long Term Care Ombudsman*] for a four-year term. The Oregon  
22 Public Guardian [*and Conservator*] serves at the pleasure of the [*Long Term Care Ombudsman and*  
23 *may be removed by the Long Term Care Ombudsman*] **Governor and may be removed** for good  
24 cause. If there is a vacancy for any cause, the [*Long Term Care Ombudsman*] **Governor** shall make  
25 an appointment within 60 days. The Oregon Public Guardian [*and Conservator*] shall receive a salary  
26 as fixed by the [*Long Term Care Ombudsman*] **Governor** and be reimbursed for all reasonable travel  
27 and other expenses incurred in the performance of official duties.

28 (2) The Oregon Public Guardian [*and Conservator*] shall be responsible for carrying out the  
29 powers, duties and functions of the Oregon Public Guardian [*and Conservator*] pursuant to ORS  
30 125.675 to 125.687[, *within the office of the Long Term Care Ombudsman, and subject to the direction,*  
31 *supervision and control of the Long Term Care Ombudsman*].

32 (3) The Oregon Public Guardian [*and Conservator, in consultation with and subject to the ap-*  
33 *proval of the Long Term Care Ombudsman,*] may:

34 (a) Hire or contract with volunteers, staff, deputy public guardians [*and conservators*] and other  
35 qualified individuals, as necessary, to carry out the powers, duties and functions of the Oregon  
36 Public Guardian [*and Conservator*];

37 (b) Prescribe the duties and assignments of persons hired or under contract with the Oregon  
38 Public Guardian [*and Conservator*];

39 (c) Fix the compensation, including reasonable travel and other expenses incurred in the per-  
40 formance of official duties, of persons hired by or under contract with the Oregon Public Guardian  
41 [*and Conservator*] subject to the State Personnel Relations Law; and

42 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.687.

43 (4) [*The Long Term Care Ombudsman may hire or contract with staff to serve in the office of the*  
44 *Long Term Care Ombudsman*] **The Oregon Public Guardian may hire or contract with staff to**  
45 **serve in the Office of the Oregon Public Guardian** as necessary to carry out the powers, duties

1 and functions of the [*Long Term Care Ombudsman in supervising, monitoring, advising and support-*  
2 *ing the Oregon Public Guardian and Conservator as required under ORS 441.406*] **Office of the**  
3 **Oregon Public Guardian.**

4 (5)(a) The Oregon Public Guardian [*and Conservator*] may delegate the exercise or discharge of  
5 any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian  
6 [*and Conservator*] to a deputy public guardian [*and conservator*], staff person or volunteer hired by  
7 or under contract with the Oregon Public Guardian [*and Conservator*] as appropriate for the purpose  
8 of conducting an official act in the name of the Oregon Public Guardian [*and Conservator*]. The of-  
9 ficial act of any person acting in the name of the Oregon Public Guardian [*and Conservator*] by the  
10 authority of the Oregon Public Guardian [*and Conservator*] is an official act of the Oregon Public  
11 Guardian [*and Conservator*].

12 **(b) Notwithstanding paragraph (a) of this subsection, a court may not appoint a deputy**  
13 **public guardian as a fiduciary in a proceeding under ORS 125.675 to 125.687 but shall appoint**  
14 **the Oregon Public Guardian as the fiduciary in the proceeding.**

15 (6) The Oregon Public Guardian [*and Conservator*] may solicit and accept gifts, grants and do-  
16 nations from public and private sources for the purpose of carrying out the provisions of ORS  
17 125.675 to 125.687, which moneys shall be deposited in the [*Long Term Care Ombudsman Account*]  
18 **Oregon Public Guardian Fund** established under [*ORS 441.419*] **section 45 of this 2017 Act.**

19 **SECTION 50.** ORS 125.680 is amended to read:

20 125.680. The Oregon Public Guardian [*and Conservator*] shall:

21 (1) Educate the public about the role and function of the **Office of the** Oregon Public Guardian  
22 [*and Conservator*] and about public guardian and conservator services.

23 (2) Provide public guardian and conservator services for persons who do not have relatives or  
24 friends willing or able to assume the duties of guardianship or conservatorship and who lack the  
25 financial resources to obtain a private guardian or conservator.

26 (3) Certify deputy public guardians [*and conservators*].

27 (4) Develop model standards of eligibility and professional conduct for deputy public guardians  
28 [*and conservators*] and of practice and procedure in public guardianship and conservatorship pro-  
29 ceedings.

30 (5) Develop and implement training and educational materials for deputy public guardians [*and*  
31 *conservators*].

32 (6) Establish and operate a program to recruit, train and supervise volunteers to provide as-  
33 sistance to the **Office of the** Oregon Public Guardian [*and Conservator*], deputy public guardians  
34 [*and conservators*] and clients.

35 (7) Establish a process, including criteria and standards, to determine the eligibility of persons  
36 to receive public guardian and conservator services and for the needs assessment required under  
37 ORS 125.683.

38 (8) Cooperate with offices of county public guardian and conservator operating under ORS  
39 125.700.

40 (9) Work with existing local and county programs and with other organizations and entities to  
41 develop and expand public guardian and conservator services in this state.

42 (10) Make recommendations to the Legislative Assembly for policy and legislation regarding  
43 implementation, improvement and expansion of public guardian and conservator services in this  
44 state.

45 **SECTION 51.** ORS 125.683 is amended to read:

1       125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian  
2 [*and Conservator*] shall conduct a needs assessment for a person who claims or is claimed not to  
3 have relatives or friends willing or able to assume the duties of guardianship or conservatorship and  
4 who claims or is claimed to lack the financial resources to obtain a private guardian or conservator.  
5 The purpose of the needs assessment is to determine the person's eligibility to receive public  
6 guardian and conservator services and to determine the appropriateness of filing a petition for the  
7 appointment of a fiduciary or other pleading on behalf of the person in a court having probate ju-  
8 risdiction. The **needs** assessment shall, at a minimum:

9       (a) Assess the person's capacity to:

10       (A) Care for the person's own safety;

11       (B) Manage the person's own financial affairs; and

12       (C) Attend to and provide for necessities such as food, shelter, clothing and medical care;

13       (b) Assess the person's financial resources[, *based on information available or supplied to the*  
14 *Oregon Public Guardian and Conservator at the time of the assessment*];

15       (c) Determine whether the [*available*] information **that is available** about the person is sufficient  
16 to support a finding that the person is incapacitated or financially incapable[,] and the entry of a  
17 court order for the appointment of a fiduciary under ORS 125.010;

18       (d) Determine whether any other person may be willing and able to serve as the person's  
19 guardian or conservator and, if appropriate, locate and contact that other person;

20       (e) Determine the type of fiduciary, if any, to request in a petition filed under ORS 125.055,  
21 giving preference to the least intrusive form of fiduciary relationship consistent with the best in-  
22 terests of the person; and

23       (f) Determine how best to provide public guardian and conservator services to the person that  
24 are least restrictive to the person's liberty, that are least intrusive to the person and that provide  
25 for the greatest degree of independence that the person is capable of exercising.

26       **(2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a resi-**  
27 **dential facility as defined in section 30 of this 2017 Act, the nursing home or residential fa-**  
28 **ility shall provide the Oregon Public Guardian access to the person's records as is necessary**  
29 **to conduct the needs assessment required under this section.**

30       **(b) Any other public agency that has provided or is providing care or services to the**  
31 **person shall disclose to the Oregon Public Guardian, upon request, a minimum amount of**  
32 **information about the person for whom the needs assessment is being conducted, including**  
33 **protected health information as defined in ORS 192.556 and financial information, as is rea-**  
34 **sonably necessary to prevent or lessen a serious and imminent threat to the health or safety**  
35 **of the person who is the subject of the needs assessment. For purposes of this paragraph, a**  
36 **request from the Oregon Public Guardian for the purpose of conducting a needs assessment**  
37 **is presumed to be a situation that will prevent or lessen a serious and imminent threat to**  
38 **the health or safety of the person.**

39       **(c) Any health care provider not identified in paragraph (a) or (b) of this subsection may**  
40 **disclose protected health information to the Oregon Public Guardian in accordance with 45**  
41 **C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety**  
42 **of a person if the health care provider, in good faith, believes the disclosure is necessary to**  
43 **prevent or lessen the threat. For purposes of this paragraph, a request from the Oregon**  
44 **Public Guardian for disclosure under this paragraph for the purposes of conducting a needs**  
45 **assessment, or the good faith belief and disclosure of the health care provider under this**

1 **paragraph, are presumed to be situations that will prevent or lessen a serious and imminent**  
2 **threat to the health or safety of the person.**

3 [(2)] (3) For each person determined to be eligible for public guardian and conservator services  
4 under this section, the Oregon Public Guardian [*and Conservator*] shall develop a written plan set-  
5 ting forth the type and duration of services to be provided by the Oregon Public Guardian [*and*  
6 *Conservator*]. The plan shall be included in any nonemergency petition or pleading filed with the  
7 court.

8 **SECTION 52.** ORS 125.685 is amended to read:

9 125.685. (1) A deputy public guardian [*and conservator*] providing public guardian and  
10 conservator services under ORS 125.675 to 125.687[:]

11 [(a)] must be certified as a deputy public guardian [*and conservator*] by the Oregon Public  
12 Guardian. [*and Conservator; and*]

13 [(b) *If appointed by the court as public guardian and conservator for a client, shall serve as pro-*  
14 *vided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise in ORS*  
15 *125.675 to 125.687.*]

16 (2) A volunteer of the Oregon Public Guardian [*and Conservator*] must provide, in writing, the  
17 volunteer's criminal history and must submit or consent to a criminal records check, including fin-  
18 gerprint identification.

19 (3) Volunteers:

20 (a) May not conduct the needs assessments required under ORS 125.683;

21 (b) May not engage in conduct that constitutes the unlicensed practice of law;

22 (c) Shall be under the supervision and control of the Oregon Public Guardian [*and*  
23 *Conservator*] or of a deputy public guardian [*and conservator*];

24 (d) Shall be instructed in confidentiality and shall maintain the confidentiality of clients and of  
25 written information and materials relating to clients;

26 (e) May not receive compensation or any other benefit but may be reimbursed for reasonable  
27 travel and other expenses incurred in the performance of their duties on behalf of the Oregon Public  
28 Guardian [*and Conservator*]; and

29 (f) Except for intentional misconduct or conduct that is grossly negligent, are immune from civil  
30 liability for any acts or omissions occurring, or errors in judgment made in good faith, in the course  
31 of providing authorized public guardian and conservator services.

32 **SECTION 53.** ORS 125.687 is amended to read:

33 125.687. (1) A court may not appoint the Oregon Public Guardian [*and Conservator or a deputy*  
34 *public guardian and conservator*] as a fiduciary for a person unless the Oregon Public Guardian [*and*  
35 *Conservator or deputy public guardian and conservator*] has petitioned for or consented to the ap-  
36 pointment. **If appointed as a fiduciary by the court, the Oregon Public Guardian, and any**  
37 **deputy public guardian, shall serve as provided in this chapter and ORS 127.005 and 127.015,**  
38 **except as expressly stated otherwise in ORS 125.675 to 125.687 or by order of the court.**

39 (2) The Oregon Public Guardian [*and Conservator*] shall file an official bond in [*such amount as*  
40 *may be fixed from time to time by the Long Term Care Ombudsman*] **an amount determined in**  
41 **consultation with the Oregon Department of Administrative Services.** The bond shall inure to  
42 the joint benefit of the several public guardianship and conservatorship estates in which the Oregon  
43 Public Guardian [*and Conservator*] is providing services, but a bond is not required to be filed in  
44 individual estates.

45 (3) The court may not charge **the Oregon Public Guardian** a fee for the filing of a petition or

1 any other pleading under this chapter [*by the Oregon Public Guardian and Conservator or a deputy*  
2 *public guardian and conservator*] when the filing is made in connection with the provision of public  
3 guardian [*and conservator*] services under ORS 125.675 to 125.687.

4 (4)(a) The court shall order the client or the client's estate to pay for reasonable expenses in-  
5 curred, including compensation for services rendered, in the provision of public guardian and  
6 conservator services to the client, including but not limited to court costs and attorney fees.

7 (b) If a client is indigent, the Oregon Public Guardian [*and Conservator and the office of the Long*  
8 *Term Care Ombudsman*] shall have a claim against the client or the client's estate for the portion  
9 of any payment ordered under paragraph (a) of this subsection that remains unpaid.

10 (5) The court may not order the Oregon Public Guardian [*and Conservator, a deputy public*  
11 *guardian and conservator or the office of the Long Term Care Ombudsman*] to pay court costs or at-  
12 torney fees in a proceeding brought on behalf of a client under ORS 125.675 to 125.687.

13 **SECTION 54.** ORS 125.242 is amended to read:

14 125.242. ORS 125.221 and 125.240 do not apply to a financial institution, as defined in ORS  
15 706.008, [*or*] a trust company, as defined in ORS 706.008, **or the Oregon Public Guardian in pro-**  
16 **ceedings under ORS 125.675 to 125.687.**

17  
18 **CONFORMING AMENDMENTS**

19  
20 **SECTION 55.** ORS 21.007 is amended to read:

21 21.007. It is the intent of the Legislative Assembly that funding be provided to the following  
22 entities by appropriations each biennium to fund programs, services and activities that were funded  
23 through court fees before the 2011-2013 biennium:

24 (1) To the counties of this state for the purposes of funding mediation services, conciliation  
25 services and other services in domestic relations cases.

26 (2) To the counties of this state for the purposes of funding the operation of law libraries or of  
27 providing law library services.

28 (3) To Portland State University and the University of Oregon to fund the programs and ex-  
29 penses of the Mark O. Hatfield School of Government and the University of Oregon School of Law  
30 under ORS 36.100 to 36.238 and 183.502.

31 (4) To the Housing and Community Services Department for the purpose of funding programs  
32 that defray the cost of rent for dwelling units for very low income households.

33 (5) To the Higher Education Coordinating Commission to fund clinical legal education programs  
34 at accredited institutions of higher education that provide civil legal services to victims of domestic  
35 violence, stalking or sexual assault.

36 (6) To the State Department of Agriculture for the purpose of funding mediation programs es-  
37 tablished by the department, other than individual farm credit mediations.

38 (7) To the Judicial Department for the purposes of funding the appellate settlement program  
39 established under ORS 2.560.

40 (8) To the [*Department of Human Services*] **Office of the Foster Child Ombudsman** for the  
41 funding of the Office of Children's Advocate.

42 **SECTION 56.** ORS 125.060 is amended to read:

43 125.060. (1) The notices required by this section must be given to all persons whose identities  
44 and addresses can be ascertained in the exercise of reasonable diligence by the person required to  
45 give the notice.

1 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-  
2 tective order must be given by the petitioner to the following persons:

3 (a) The respondent, if the respondent has attained 14 years of age.

4 (b) The spouse, parents and adult children of the respondent.

5 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most  
6 closely related to the respondent.

7 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or  
8 welfare of the respondent.

9 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the  
10 respondent by a court of any state, any trustee for a trust established by or for the respondent, any  
11 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and  
12 any person acting as attorney-in-fact for the respondent under a power of attorney.

13 (f) If the respondent is a minor, the person who has exercised principal responsibility for the  
14 care and custody of the respondent during the 60-day period before the filing of the petition.

15 (g) If the respondent is a minor and has no living parents, any person nominated to act as  
16 fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

17 (h) If the respondent is receiving moneys paid or payable by the United States through the De-  
18 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs  
19 regional office that has responsibility for the payments to the protected person.

20 (i) If the respondent is receiving moneys paid or payable for public assistance provided under  
21 ORS chapter 411 by the State of Oregon through the Department of Human Services, a represen-  
22 tative of the department.

23 (j) If the respondent is receiving moneys paid or payable for medical assistance provided under  
24 ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of  
25 the authority.

26 (k) If the respondent is committed to the legal and physical custody of the Department of Cor-  
27 rections, the Attorney General and the superintendent or other officer in charge of the facility in  
28 which the respondent is confined.

29 (L) If the respondent is a foreign national, the consulate for the respondent's country.

30 (m) Any other person that the court requires.

31 (3) Notice of a motion for the termination of the protective proceedings, for removal of a  
32 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's  
33 actions or for protective orders in addition to those sought in the petition must be given by the  
34 person making the motion to the following persons:

35 (a) The protected person, if the protected person has attained 14 years of age.

36 (b) Any person who has filed a request for notice in the proceedings.

37 (c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the  
38 protected person.

39 (d) If the protected person is receiving moneys paid or payable by the United States through the  
40 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-  
41 fairs regional office that has responsibility for the payments to the protected person.

42 (e) If the protected person is committed to the legal and physical custody of the Department of  
43 Corrections, the Attorney General and the superintendent or other officer in charge of the facility  
44 in which the protected person is confined.

45 (f) Any other person that the court requires.

1 (4) A request for notice under subsection (3)(b) of this section must be in writing and include  
2 the name, address and phone number of the person requesting notice. A copy of the request must  
3 be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has  
4 been appointed. The original request must be filed with the court. The person filing the request must  
5 pay the fee specified by ORS 21.135.

6 (5) A person who files a request for notice in the proceedings in the manner provided by sub-  
7 section (4) of this section is entitled to receive notice from the fiduciary of any motion specified in  
8 subsection (3) of this section and of any other matter to which a person listed in subsection (2) of  
9 this section is entitled to receive notice under a specific provision of this chapter.

10 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting  
11 to the adoption of a minor, the notice provided for in this section must also be given to the minor's  
12 brothers, sisters, aunts, uncles and grandparents.

13 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-  
14 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be  
15 given by the petitioner to the following persons:

16 (a) Any attorney who is representing the respondent in any capacity.

17 (b) If the respondent is a resident of a nursing home or residential facility, or if the person  
18 nominated to act as fiduciary intends to place the respondent in a nursing home or residential fa-  
19 cility, the Office of the Long Term Care Ombudsman **or the Office of the Residential Facilities**  
20 **Ombudsman.**

21 (c) If the respondent is a resident of a mental health treatment facility or a residential facility  
22 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends  
23 to place the respondent in such a facility, the system described in ORS 192.517 (1).

24 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding  
25 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this  
26 section must be given by the person making the motion to the following persons:

27 (a) Any attorney who represented the protected person at any time during the protective pro-  
28 ceeding.

29 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion  
30 seeks authority to place the protected person in a nursing home or residential facility, the Office  
31 of the Long Term Care Ombudsman **or the Office of the Residential Facilities Ombudsman.**

32 (c) If the protected person is a resident of a mental health treatment facility or a residential  
33 facility for individuals with developmental disabilities, or if the motion seeks authority to place the  
34 protected person in such a facility, the system described in ORS 192.517 (1).

35 (9) A respondent or protected person may not waive the notice required under this section.

36 (10) The requirement that notice be served on an attorney for a respondent or protected person  
37 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney  
38 receiving the notice to represent the respondent or protected person in the protective proceeding.

39 **SECTION 57.** ORS 125.075 is amended to read:

40 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected  
41 person may present objections to a petition or to a motion in a protective proceeding, including but  
42 not limited to:

43 (a) Any person entitled to receive notice under ORS 125.060.

44 (b) Any stepparent or stepchild of the respondent or protected person.

45 (c) Any other person the court may allow.

1 (2) Objections to a petition may be either written or oral. Objections to a motion must be in  
2 writing. Objections to a petition or to a motion must be made or filed with the court within 15 days  
3 after notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065.  
4 The court shall designate a place where oral objections may be made. If a person appears within the  
5 time allowed at the place designated by the court for the purpose of making oral objections, the  
6 clerk of the court shall provide a means of reducing the oral objections to a signed writing for the  
7 purpose of filing the objection.

8 (3) If objections are presented by any of the persons listed in subsection (1) of this section, the  
9 court shall schedule a hearing on the objections. The petitioner or person making the motion shall  
10 give notice to all persons entitled to notice under ORS 125.060 (3) of the date, time and place of the  
11 scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the  
12 manner prescribed by ORS 125.065.

13 (4) Notwithstanding ORS 21.170, the court may not charge or collect any fee for the filing of  
14 objections under the provisions of this section or for the filing of any motion from any of the fol-  
15 lowing:

16 (a) The respondent or the protected person;

17 (b) The Office of the Long Term Care Ombudsman **or the Office of the Residential Facilities**  
18 **Ombudsman**; or

19 (c) The system described in ORS 192.517 (1).

20 (5) The court for good cause shown may provide for a different method or time of giving notice  
21 under subsection (3) of this section.

22 **SECTION 58.** ORS 125.320 is amended to read:

23 125.320. (1) A guardian may not authorize the sterilization of the protected person.

24 (2) A guardian may not use funds from the protected person's estate for room and board that  
25 the guardian or guardian's spouse, parent or child have furnished the protected person unless the  
26 charge for the service is approved by order of the court before the payment is made.

27 (3)(a) Before a guardian may place an adult protected person in a mental health treatment fa-  
28 cility, a nursing home or other residential facility, the guardian must file a statement with the court  
29 informing the court that the guardian intends to make the placement.

30 (b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 to  
31 the persons specified in ORS 125.060 (3).

32 (c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement  
33 of intent must be given in the manner provided by ORS 125.065 by the guardian to the following  
34 persons:

35 (A) Any attorney who represented the protected person at any time during the protective pro-  
36 ceeding.

37 (B) If the protected person is a resident of a nursing home or residential facility, or if the notice  
38 states the intention to place the protected person in a nursing home or residential facility, the Office  
39 of the Long Term Care Ombudsman **or the Office of the Residential Facilities Ombudsman**.

40 (C) If the protected person is a resident of a mental health treatment facility or a residential  
41 facility for individuals with developmental disabilities, or if the notice states the intention to place  
42 the protected person in such a facility, the system described in ORS 192.517 (1).

43 (d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person  
44 must clearly indicate the manner in which the protected person may object to the proposed place-  
45 ment.

1 (e) The guardian may thereafter place the adult protected person in a mental health treatment  
2 facility, a nursing home or other residential facility without further court order. If an objection is  
3 made in the manner provided by ORS 125.075, the court shall schedule a hearing on the objection  
4 as soon as practicable.

5 (f) The requirement that notice be served on an attorney for a protected person under paragraph  
6 (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to  
7 represent the protected person in the protective proceeding.

8 **SECTION 59.** ORS 125.410 is amended to read:

9 125.410. (1) Except as provided in subsection (2) of this section, the court shall require a  
10 conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator  
11 according to law, with sureties as specified by the court. Unless otherwise directed, the bond must  
12 be in the amount of the aggregate capital value of the property of the estate in the control of the  
13 conservator plus one year's estimated income minus the value of securities and money deposited  
14 under arrangements requiring an order of the court for their removal and the value of any real  
15 property that the conservator, by express limitation of power, lacks power to sell or convey without  
16 court authorization.

17 (2)(a) The court may waive a bond for good cause shown.

18 (b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust  
19 company acting as fiduciary, ORS 125.715, relating to a county public guardian and conservator  
20 acting as fiduciary, ORS 125.687, relating to the Oregon Public Guardian [*and Conservator*] or a  
21 deputy public guardian [*and conservator*] acting as fiduciary under ORS 125.675 to 125.687, or ORS  
22 406.050 (10), relating to the Department of Veterans' Affairs acting as fiduciary.

23 (3) Sureties for a bond required under this section are jointly and severally liable with the  
24 conservator and with each other.

25 (4) Letters of conservatorship may not be issued until the bond required by this section is ap-  
26 proved by the court.

27 (5) The bond of the conservator continues in effect until the sureties on the bond are released  
28 by order of the court.

29 (6) The court may at any time increase or reduce the amount of the bond required of a  
30 conservator for the protection of the protected person and the estate of the protected person.

31 (7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the  
32 conservator shall execute and file in the protective proceeding a new bond before the cancellation  
33 date specified by the surety. The new bond shall be in the amount and subject to those conditions  
34 that may be required by the court. If the conservator fails to file a new bond, the authority of the  
35 conservator ends on the date specified by the surety for cancellation of the bond. The letters of  
36 conservatorship issued to the conservator are void from that date, and the conservator must make  
37 and file the final accounting of the conservator.

38 **SECTION 60.** ORS 443.455 is amended to read:

39 443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil  
40 penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705  
41 to 441.745.

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

45 (3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties

1 for residential treatment facilities and residential treatment homes that are not in compliance with  
2 ORS 443.400 to 443.455.

3 (4) If the department or authority investigates and makes a finding of abuse arising from delib-  
4 erate or other than accidental action or inaction that is likely to cause a negative outcome by a  
5 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the  
6 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose  
7 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed  
8 \$15,000 in any 90-day period. As used in this subsection:

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

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

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

15 (d) "Sexual abuse" means any form of sexual contact between an employee of a residential fa-  
16 cility or a person providing services in the residential facility and a resident of that facility, in-  
17 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual  
18 harassment.

19 (5) Civil penalties recovered from a residential training facility, residential training home, resi-  
20 dential treatment facility or residential treatment home shall be deposited in the [*Long Term Care*  
21 *Ombudsman*] **appropriate subaccount in the Office of Oregon Ombudsmen** Account established  
22 in ORS 441.419.

23 **SECTION 61.** ORS 443.738 is amended to read:

24 443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers  
25 and substitute caregivers for adult foster homes shall satisfactorily meet all educational require-  
26 ments established by the licensing agency. After consultation with representatives of providers,  
27 educators, residents' advocates and the [*Long Term Care*] **Residential Facilities** Ombudsman, the  
28 licensing agency shall adopt by rule standards governing the educational requirements. The rules  
29 shall require that a person may not provide care to any resident prior to acquiring education or  
30 supervised training designed to impart the basic knowledge and skills necessary to maintain the  
31 health, safety and welfare of the resident. Each provider shall document compliance with the edu-  
32 cational requirements for persons subject to the requirements.

33 (2) The rules required under subsection (1) of this section shall include but need not be limited  
34 to the following:

35 (a) A requirement that, before being licensed, a provider successfully completes training that  
36 satisfies a defined curriculum, including demonstrations and practice in physical caregiving,  
37 screening for care and service needs, appropriate behavior toward residents with physical, cognitive  
38 and mental disabilities and issues related to architectural accessibility;

39 (b) A requirement that a provider pass a test before being licensed or becoming a resident  
40 manager. The test shall evaluate the ability to understand and respond appropriately to emergency  
41 situations, changes in medical conditions, physicians' orders and professional instructions, nutri-  
42 tional needs, residents' preferences and conflicts; and

43 (c) A requirement that, after being licensed, a provider or resident manager successfully com-  
44 pletes continuing education as described in ORS 443.742.

45 (3) After consultation with representatives of providers, educators, residents' advocates and the

1 [Long Term Care] **Residential Facilities** Ombudsman, the licensing agency may adopt by rule ex-  
2 ceptions to the training requirements of subsections (1) and (2) of this section for persons who are  
3 appropriately licensed medical care professionals in Oregon or who possess sufficient education,  
4 training or experience to warrant an exception. The licensing agency may not make any exceptions  
5 to the testing requirements.

6 (4) The licensing agency may permit a person who has not completed the training or passed the  
7 test required in subsection (2)(a) and (b) of this section to act as a resident manager until the  
8 training and testing are completed or for 60 days, whichever is shorter, if the licensing agency de-  
9 termines that an unexpected and urgent staffing need exists. The licensed provider must notify the  
10 licensing agency of the situation and demonstrate that the provider is unable to find a qualified  
11 resident manager, that the person has met the requirements for a substitute caregiver for the adult  
12 foster home and that the provider will provide adequate supervision.

13 (5) Providers shall serve three nutritionally balanced meals to residents each day. A menu for  
14 the meals for the coming week shall be prepared and posted weekly.

15 (6) Providers shall make available at least six hours of activities each week which are of inter-  
16 est to the residents, not including television or movies. The licensing agency shall make information  
17 about resources for activities available to providers upon request. Providers or substitute caregivers  
18 shall be directly involved with residents on a daily basis.

19 (7) Providers shall give at least 30 days' written notice to the residents, and to the legal repre-  
20 sentative, guardian or conservator of any resident, before selling, leasing or transferring the adult  
21 foster home business or the real property on which the adult foster home is located. Providers shall  
22 inform real estate licensees, prospective buyers, lessees and transferees in all written communi-  
23 cations that the license to operate an adult foster home is not transferable and shall refer them to  
24 the licensing agency for information about licensing.

25 (8) If a resident dies or leaves an adult foster home for medical reasons and indicates in writing  
26 the intent to not return, the provider may not charge the resident for more than 15 days or the time  
27 specified in the provider contract, whichever is less, after the resident has left the adult foster home.  
28 The provider has an affirmative duty to take reasonable actions to mitigate the damages by ac-  
29 cepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect  
30 or abuse by the provider or due to conditions of imminent danger to life, health or safety, the pro-  
31 vider may not charge the resident beyond the resident's last day in the home. The provider shall  
32 refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

33 (9) Chemical and physical restraints may be used only after considering all other alternatives  
34 and only when required to treat a resident's medical symptoms or to maximize a resident's physical  
35 functioning. Restraints may not be used for discipline of a resident or for the convenience of the  
36 adult foster home. Restraints may be used only as follows:

37 (a) Psychoactive medications may be used only pursuant to a prescription that specifies the  
38 circumstances, dosage and duration of use.

39 (b) Physical restraints may be used only pursuant to a qualified practitioner's order that speci-  
40 fies the type, circumstances and duration of use in accordance with rules adopted by the licensing  
41 agency. The rules adopted by the licensing agency relating to physical restraints shall include  
42 standards for use and training.

43 (10) If the physical characteristics of the adult foster home do not encourage contact between  
44 caregivers and residents and among residents, the provider shall demonstrate how regular positive  
45 contact will occur. Providers may not place residents who are unable to walk without assistance in

1 a basement, split-level, second story or other area that does not have an exit at ground level.  
2 Nonambulatory residents shall be given first floor rooms.

3 (11)(a) The provider may not transfer or discharge a resident from an adult foster home unless  
4 the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the  
5 welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resident  
6 written notice as soon as possible under the circumstances.

7 (b) The provider shall give the resident and the resident's legal representative, guardian or  
8 conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a  
9 medical emergency including but not limited to a resident's experiencing an increase in level of care  
10 needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the  
11 provider shall give the resident written notice as soon as possible under the circumstances.

12 (c) The resident has the right to an administrative hearing prior to an involuntary transfer or  
13 discharge. If the resident is being transferred or discharged for a medical emergency, or to protect  
14 the welfare of the resident or other residents, as defined by rule, the hearing must be held within  
15 seven days of the transfer or discharge. The provider shall hold a space available for the resident  
16 pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing  
17 transfer notices and hearings for residents of long term care facilities shall apply to adult foster  
18 homes.

19 (12) The provider may not include any illegal or unenforceable provision in a contract with a  
20 resident and may not ask or require a resident to waive any of the resident's rights.

21 (13) Any lessor of a building in which an adult foster home is located may not interfere with the  
22 admission, discharge or transfer of any resident in the adult foster home unless the lessor is a pro-  
23 vider or coprovider on the license.

24 **SECTION 62.** ORS 443.767 is amended to read:

25 443.767. (1) When the licensing agency receives a complaint that alleges that a resident of a li-  
26 censed adult foster home has been injured, abused or neglected, and that the resident's health or  
27 safety is in imminent danger, or that the resident has died or been hospitalized, the investigation  
28 shall begin immediately after the complaint is received. If the investigator determines that the  
29 complaint is substantiated, the licensing agency shall take appropriate corrective action imme-  
30 diately.

31 (2) When the licensing agency receives a complaint that alleges the existence of any circum-  
32 stance that could result in injury, abuse or neglect of a resident of a licensed adult foster home, and  
33 that the circumstance could place the resident's health or safety in imminent danger, the agency  
34 shall investigate the complaint promptly. If the investigator determines that the complaint is sub-  
35 stantiated, the agency shall take appropriate corrective action promptly.

36 (3) After public hearing, the licensing agency shall by rule set standards for the procedure,  
37 content and time limits for the initiation and completion of investigations of complaints. The time  
38 limits shall be as short as possible and shall vary in accordance with the severity of the circum-  
39 stances alleged in the complaint. In no event shall the investigation exceed a duration of 60 days,  
40 unless there is an ongoing concurrent criminal investigation, in which case the licensing agency  
41 may take a reasonable amount of additional time in which to complete the investigation.

42 (4) The licensing agency shall take no longer than 60 days from the completion of the investi-  
43 gation report to take appropriate corrective action in the case of any complaint that the investi-  
44 gator determines to be substantiated.

45 (5)(a) The licensing agency shall mail a copy of the investigation report within seven days of the

1 completion of the report to:

2 (A) The complainant, unless the complainant requests anonymity;

3 (B) The resident, and any person designated by the resident to receive information concerning  
4 the resident;

5 (C) The facility; and

6 (D) The [*Long Term Care*] **Residential Facilities** Ombudsman.

7 (b) The copy of the report shall be accompanied by a notice that informs the recipient of the  
8 right to submit additional evidence.

9 (6)(a) The complaint and the investigation report shall be available to the public at the local  
10 office of the licensing agency or the type B area agency [*on aging*], if appropriate. When the li-  
11 censing agency or type B area agency [*on aging*] concludes the investigation of a complaint, the li-  
12 censing agency or type B area agency [*on aging*] shall clearly designate the outcome of the  
13 complaint investigation and make the designation available to the public together with the com-  
14 plaint and the investigation report.

15 **(b) As used in this subsection, “area agency” has the meaning given that term in ORS**  
16 **410.040.**

17 (7) A copy of the report shall be forwarded to the licensing agency whether or not the investi-  
18 gation report concludes that the complaint is substantiated.

19 **SECTION 63.** ORS 476.030 is amended to read:

20 476.030. (1) The State Fire Marshal shall enforce all statutes, and make rules relating to:

21 (a) The prevention of fires.

22 (b) The storage and use of combustibles and explosives.

23 (c) The maintenance and regulation of structural fire safety features in occupied structures and  
24 overseeing the safety of and directing the means and adequacy of exit in case of fire from factories,  
25 asylums, hospitals, churches, schools, halls, theaters, amphitheaters, all buildings, except private  
26 residences, which are occupied for sleeping purposes, and all other places where large numbers of  
27 persons work, live or congregate from time to time for any purpose except that structural changes  
28 shall not be required in buildings built, occupied and maintained in conformity with state building  
29 code regulations applicable at the time of construction.

30 (d) Standards for equipment used for fire protection purposes within this state including stand-  
31 ard thread for fire hose couplings and hydrant fittings.

32 (2) The State Fire Marshal and deputies shall have such powers and perform such other duties  
33 as are prescribed by law.

34 (3) If, in the opinion of the State Fire Marshal, a governmental subdivision of the state has en-  
35 acted adequate regulations generally conforming to state and national standards concerning fire  
36 prevention, fire safety measures and building construction requirements for safety, and if the gov-  
37 ernmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal  
38 may exempt the area subject to such regulation either partially or fully from the statutes, rules and  
39 regulations administered by the State Fire Marshal. Prior to adoption of any such exemption, the  
40 State Fire Marshal may request from the Department of Public Safety Standards and Training con-  
41 sideration of and recommendations regarding the exemption. The exemption may extend for a two-  
42 year period, and may be renewed from time to time, but may be canceled by the State Fire Marshal  
43 following 30 days' written notice if the State Fire Marshal finds that the governmental subdivision's  
44 regulations or enforcement thereof are not reasonably sufficient. The governmental subdivision shall  
45 furnish a copy of such regulations to the State Fire Marshal and shall file with the State Fire

1 Marshal any amendment thereto within 30 days before the effective date of such amendment. The  
2 State Fire Marshal shall designate a person or division within such governmental subdivision as an  
3 approved authority for exercising functions relating to fire prevention, fire safety measures and  
4 building construction. Upon request of a local official having enforcement responsibility and a  
5 showing of unusual fire hazard or other special circumstances, the State Fire Marshal shall make  
6 investigation and appropriate recommendations.

7 (4) The State Fire Marshal may investigate or cause an investigation to be made to determine  
8 the probable cause, origin and circumstances of any fire and shall classify such findings as the State  
9 Fire Marshal may find appropriate to promote fire protection and prevention.

10 (5) The State Fire Marshal shall provide training in fire safety inspection to the Department of  
11 Human Services, area agencies, the Oregon Health Authority, community mental health programs,  
12 developmental disabilities programs and designees of the Long Term Care Ombudsman **and the**  
13 **Residential Facilities Ombudsman**. If an adult foster home has been inspected by the Department  
14 of Human Services, the Oregon Health Authority, an area agency, a community mental health pro-  
15 gram or a developmental disabilities program and the agency conducting the inspection reasonably  
16 believes that the adult foster home is not in compliance with applicable fire safety rules, the agency  
17 conducting the inspection may request the State Fire Marshal to inspect or cause an inspection to  
18 be made. If a designee of the [*Long Term Care*] **Residential Facilities Ombudsman**, in the course  
19 of visiting an adult foster home, believes that the adult foster home is not in compliance with ap-  
20 plicable fire safety rules, the designee shall report the problem to the appropriate agency to request  
21 a fire safety inspection by the office of the State Fire Marshal or by a designated representative of  
22 the office of the State Fire Marshal.

23 (6) Upon the request of the Department of Human Services, the Oregon Health Authority, an  
24 area agency, a community mental health program or a developmental disabilities program, the State  
25 Fire Marshal shall inspect or cause an inspection to be made to determine if the adult foster home  
26 is in compliance with rules jointly adopted by the Department of Human Services and the State Fire  
27 Marshal establishing fire safety standards for adult foster homes.

28 (7) As used in subsections (5) and (6) of this section:

29 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

30 (b) "Area agency" has the meaning given that term in ORS 410.040.

31 (c) "Community mental health program" means a program established under ORS 430.620 (1)(b).

32 (d) "Developmental disabilities program" means a program established under ORS 430.620 (1)(a).

33  
34 **OPERATIVE DATE**

35  
36 **SECTION 64. Sections 1, 3, 5 to 8, 10 to 13, 30 to 39 and 42 to 47 of this 2017 Act and the**  
37 **amendments to statutes by sections 2, 9, 14 to 29, 40 and 48 to 63 of this 2017 Act become**  
38 **operative on January 1, 2018.**

39 **SECTION 65. The Long Term Care Ombudsman may take any actions before the opera-**  
40 **tive date specified in section 64 of this 2017 Act that are necessary to carry out sections 1,**  
41 **3, 5 to 8, 10 to 13, 30 to 39 and 42 to 47 of this 2017 Act and the amendments to statutes by**  
42 **sections 2, 9, 14 to 29, 40 and 48 to 63 of this 2017 Act on and after the operative date speci-**  
43 **fied in section 64 of this 2017 Act.**

44  
45 **CAPTIONS**

