

HOUSE AMENDMENTS TO HOUSE BILL 2170

By COMMITTEE ON HUMAN SERVICES AND HOUSING

April 25

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and lines 3 through
2 5 and insert “21.007, 125.060, 125.075, 125.242, 125.320, 125.410, 125.675, 125.678, 125.680, 125.683,
3 125.685, 125.687, 410.550, 418.201, 418.648, 418.848, 419B.005, 441.402, 441.403, 441.406, 441.407,
4 441.408, 441.409, 441.411, 441.412, 441.413, 441.414, 441.416, 441.417, 441.418, 441.419, 443.455, 443.738,
5 443.767, 443.825 and 476.030; and declaring an emergency.

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

9 Delete lines 7 through 28 and delete pages 2 through 25 and insert:

“OFFICE OF OREGON OMBUDSMEN

10
11
12
13 **“SECTION 1. (1) The Office of Oregon Ombudsmen is established to provide administra-**
14 **tive services and support to the:**

15 **“(a) Office of the Long Term Care Ombudsman;**

16 **“(b) Office of the Residential Facilities Ombudsman;**

17 **“(c) Office of the Oregon Public Guardian;**

18 **“(d) Office of the Foster Parent Ombudsman; and**

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

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

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

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

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

28 **“SECTION 2.** ORS 441.419 is amended to read:

29 **“441.419. The [Long Term Care Ombudsman] Office of Oregon Ombudsmen Account is estab-**
30 **lished in the State Treasury, separate and distinct from the General Fund. [All miscellaneous re-**
31 **ceipts, gifts and federal and other grants received by the Long Term Care Ombudsman shall be**
32 **deposited into the Long Term Care Ombudsman Account and are continuously appropriated to the**
33 **Long Term Care Ombudsman for carrying out the responsibilities of the Long Term Care Ombudsman**
34 **and the Oregon Public Guardian and Conservator.] The Office of the Long Term Care Ombuds-**
35 **man, the Office of the Residential Facilities Ombudsman, the Office of the Foster Child**

1 Ombudsman and the Office of the Foster Parent Ombudsman shall each have a dedicated
2 subaccount in the Office of Oregon Ombudsmen Account. All miscellaneous receipts, gifts
3 and federal and other grants received by the Office of the Long Term Care Ombudsman, the
4 Office of the Residential Facilities Ombudsman, the Office of the Foster Child Ombudsman
5 and the Office of the Foster Parent Ombudsman shall be deposited in the appropriate sub-
6 account. The moneys in each subaccount are continuously appropriated to the Office of the
7 Long Term Care Ombudsman, the Office of the Residential Facilities Ombudsman, the Office
8 of the Foster Child Ombudsman and the Office of the Foster Parent Ombudsman, as appro-
9 priate.

10 **“SECTION 3.** The Department of Human Services shall transfer funds to be deposited in
11 the subaccount of the Office of Oregon Ombudsmen Account dedicated to the Office of the
12 Foster Child Ombudsman as necessary to support the Office of the Foster Child Ombudsman.
13

14 “FOSTER CHILD OMBUDSMAN

15
16 **“SECTION 4.** Sections 5 to 8 and 10 to 13 of this 2017 Act are added to and made a part
17 of ORS chapter 418.

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

19 **“(a) ‘Foster child’** has the meaning given that term in ORS 418.200.

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

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

26 **“(3) The Foster Child Ombudsman** shall:

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

29 **“(b) Investigate a complaint made by or on behalf of a foster child if the allegations**
30 **contained in the complaint may adversely affect the health, safety, welfare or rights of the**
31 **foster child;**

32 **“(c) Collaborate with the Department of Human Services, foster parents, attorneys, fos-**
33 **ter child advocates and supporters, court appointed special advocates and local citizen review**
34 **boards to obtain timely responses to inquiries and requests and to resolve issues;**

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

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

39 **“(A) A foster child or individual acting on behalf of the foster child to make complaints**
40 **about the foster child’s care or interaction with the individuals and entities described in**
41 **paragraph (c) of this subsection; and**

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

45 **“(f) Organize, participate in or cooperate with persons and agencies in general studies,**

1 conferences, inquiries or meetings that may result in recommendations for improvements in
2 the functioning of the foster care system in this state;

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

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

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

11 “(j) Establish and maintain the hotline telephone number for foster children required by
12 ORS 418.201 (7).

13 “(4) The Foster Child Ombudsman or a designee shall report to a foster child and to an
14 individual that makes a complaint on behalf of the foster child the findings of the ombuds-
15 man or designee in the investigation of the complaint and may make recommendations. If
16 appropriate, the ombudsman or designee shall attempt to resolve the complaint using in-
17 formal mediation or conflict resolution techniques. Complaints of conditions threatening the
18 safety or well-being of a foster child must be reported to the department or law enforcement
19 officials.

20 “(5) A foster child, or individual acting on behalf of a foster child, who makes a complaint
21 to the Foster Child Ombudsman in good faith under this section, or who participates in an
22 investigation of a complaint may not be subjected to a penalty, sanction or restriction, or
23 be denied any right, privilege or benefit, on account of making the complaint or participating
24 in the investigation of the complaint.

25 “(6) In order to encourage foster children and individuals acting on behalf of foster chil-
26 dren to communicate with the Foster Child Ombudsman, any foster child, or individual act-
27 ing on behalf of a foster child, who makes a complaint to the ombudsman in good faith under
28 this section, or who participates in an investigation of a complaint, shall have immunity from
29 any civil or criminal liability that might otherwise be incurred or imposed on account of
30 making the complaint or participating in the investigation of the complaint.

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

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

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

1 “(10) All state agencies shall cooperate with and assist the Foster Child Ombudsman in
2 the performance of the ombudsman’s duties and functions.

3 “SECTION 6. (1) The Foster Child Ombudsman may appoint designees to serve as repre-
4 sentatives of the ombudsman in local communities. The ombudsman shall regularly monitor
5 the functions of designees.

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

9 “(a) The Department of Human Services.

10 “(b) Elected officials.

11 “(c) The Oregon Health Authority.

12 “(d) Foster youth or former foster children.

13 “(e) Court appointed special advocates.

14 “(f) Local citizen review boards.

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

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

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

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

24 “SECTION 7. The Foster Child Ombudsman shall establish procedures to maintain the
25 confidentiality of the records and files of foster children. The procedures must meet the
26 following requirements:

27 “(1) The Foster Child Ombudsman or designee may not disclose, except to law enforce-
28 ment or state agencies, the identity of any foster child, or individual acting on behalf of a
29 foster child, without written consent signed by the foster child, the legal representative of
30 the foster child or an individual legally authorized to act on behalf of the foster child. The
31 written consent must specify to whom the disclosure may be made.

32 “(2) The identity of any foster child or individual providing information on behalf of the
33 foster child shall be confidential. If the complaint becomes the subject of judicial proceedings,
34 the investigative information held by the Foster Child Ombudsman or designee shall be dis-
35 closed for the purpose of the proceedings if requested by the court.

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

39 “SECTION 8. (1) The Foster Child Ombudsman Advisory Committee is established con-
40 sisting of five members appointed by the Governor and confirmed by the Senate under ORS
41 171.562 and 171.565.

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

1 **“(3) The members of the committee must:**
2 **“(a) Be residents of this state;**
3 **“(b) Include individuals who are or who represent current or former foster children, in-**
4 **cluding racial and ethnic minorities;**
5 **“(c) Have knowledge and interest in the problems of foster children; and**
6 **“(d) Be representative of all areas of this state and the demographics of groups served**
7 **by the Foster Child Ombudsman.**
8 **“(4) The committee shall select one of its members as chairperson and another as vice**
9 **chairperson, for such terms and with duties and powers necessary for the performance of**
10 **the functions of such offices as the committee determines.**
11 **“(5) A majority of the members of the committee constitutes a quorum for the trans-**
12 **action of business. Decisions may be made by a majority of the quorum.**
13 **“(6) The committee shall meet at least once each month at a place, day and hour deter-**
14 **mined by the committee. The committee also shall meet at other times and places specified**
15 **by the call of the chairperson or of a majority of the members of the committee. The com-**
16 **mittee shall confer each month with the Foster Child Ombudsman.**
17 **“(7) Members of the committee are not entitled to compensation or reimbursement for**
18 **expenses and serve as volunteers.**
19 **“SECTION 9. ORS 418.201 is amended to read:**
20 **“418.201. It is the intent of the Legislative Assembly that each foster child have certain essen-**
21 **tial rights, including but not limited to the following:**
22 **“(1) To have the ability to make oral and written complaints about care, placement or services**
23 **that are unsatisfactory or inappropriate, and to be provided with information about a formal process**
24 **for making complaints without fear of retaliation, harassment or punishment.**
25 **“(2) To be notified of, and provided with transportation to, court hearings and reviews by local**
26 **citizen review boards pertaining to the foster child’s case when the matters to be considered or**
27 **decided upon at the hearings and reviews are appropriate for the foster child, taking into account**
28 **the age and developmental stage of the foster child.**
29 **“(3) To be provided with written contact information of specific individuals whom the foster**
30 **child may contact regarding complaints, concerns or violations of rights, that is updated as neces-**
31 **sary and kept current.**
32 **“(4) When a foster child is 14 years of age or older, to be provided with written information**
33 **within 60 days of the date of any placement or any change in placement, regarding:**
34 **“(a) How to establish a bank account in the foster child’s name as allowed under state law;**
35 **“(b) How to acquire a driver license as allowed under state law;**
36 **“(c) How to remain in foster care after reaching 18 years of age;**
37 **“(d) The availability of a tuition and fee waiver for a current or former foster child under ORS**
38 **350.300;**
39 **“(e) How to obtain a copy of the foster child’s credit report, if any;**
40 **“(f) How to obtain medical, dental, vision, mental health services or other treatment, including**
41 **services and treatments available without parental consent under state law; and**
42 **“(g) A transition toolkit, including a comprehensive transition plan.**
43 **“(5) With respect to a foster child’s rights under the federal and state constitutions, laws, in-**
44 **cluding case law, rules and regulations:**
45 **“(a) To receive a document setting forth such rights that is age-appropriate and developmentally**

1 appropriate within 60 days of the date of any placement or any change in placement;

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

5 “(c) To have an annual review of such rights that is age-appropriate and developmentally ap-
6 propriate while the foster child is in substitute care; and

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

8 “(A) To receive a document setting forth such rights that is age-appropriate and developmentally
9 appropriate; and

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

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

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

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

23
24 **“FOSTER PARENT OMBUDSMAN**

25
26 **“SECTION 10. (1) As used in this section:**

27 **“(a) ‘Foster parent’ means an individual who has a certificate to operate a foster home**
28 **issued under ORS 418.635 and who is providing care to a foster child in the individual’s home.**

29 **“(b) ‘Service provider’ means an individual, entity, agency or program that provides in-**
30 **formation and services to foster parents, either directly or indirectly, including but not lim-**
31 **ited to:**

32 **“(A) Information and assistance in accessing parental and community support, services**
33 **and resources;**

34 **“(B) Respite care;**

35 **“(C) Training; and**

36 **“(D) Coaching, mentoring or counseling.**

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

40 **“(3) The Foster Parent Ombudsman shall:**

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

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

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

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

6 “(e) Work with foster parents and individuals acting on their behalf to identify and re-
7 commend processes for:

8 “(A) A foster parent or individual acting on behalf of the foster parent to make com-
9 plaints regarding interactions with the individuals and entities described in paragraph (c) of
10 this subsection; and

11 “(B) Engaging the participation of foster parents and individuals legally authorized to act
12 on behalf of foster parents in general studies, conferences, inquiries or meetings related to
13 foster care in this state;

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

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

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

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

25 “(j) Establish and maintain the hotline telephone number for foster parents required by
26 ORS 418.648 (12).

27 “(4) The Foster Parent Ombudsman or a designee shall report to a foster parent and to
28 an individual that makes a complaint on behalf of the foster parent the findings of the om-
29 budsman or designee in the investigation of the complaint and may make recommendations.
30 If appropriate, the ombudsman or designee shall attempt to resolve the complaint using in-
31 formal mediation or conflict resolution techniques.

32 “(5)(a) A foster parent, or individual acting on behalf of a foster parent, who makes a
33 complaint to the Foster Parent Ombudsman in good faith under this section, or who partic-
34 ipates in an investigation of a complaint, may not be subjected to a penalty, sanction or re-
35 striction in connection with the foster parent’s certification to operate a foster home, or be
36 denied any right, privilege or benefit, on account of making the complaint or participating
37 in the investigation of the complaint.

38 “(b) This subsection does not prohibit the department from taking action based on in-
39 formation obtained during the course of an investigation that demonstrates that the foster
40 parent has failed to comply with requirements in this chapter.

41 “(6) In order to encourage foster parents and individuals acting on behalf of foster par-
42 ents to communicate with the Foster Parent Ombudsman, any foster parent or individual
43 acting on behalf of a foster parent who makes a complaint to the ombudsman in good faith
44 under this section, or who participates in an investigation of a complaint, shall have immu-
45 nity from any civil or criminal liability that might otherwise be incurred or imposed on ac-

1 count of making the complaint or participating in the investigation of the complaint.

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

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

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

17 “(10) All state agencies shall cooperate with and assist the Foster Parent Ombudsman in
18 the performance of the ombudsman’s duties and functions.

19 “SECTION 11. (1) The Foster Parent Ombudsman may appoint designees to serve as
20 representatives of the ombudsman in local communities. The ombudsman shall regularly
21 monitor the functions of designees.

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

25 “(a) The Department of Human Services.

26 “(b) Elected officials.

27 “(c) The Oregon Health Authority.

28 “(d) Foster care providers.

29 “(e) Court appointed special advocates.

30 “(f) Local citizen review boards.

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

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

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

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

40 “SECTION 12. The Foster Parent Ombudsman shall establish procedures to maintain the
41 confidentiality of the records and files of foster parents. The procedures must meet the fol-
42 lowing requirements:

43 “(1) The Foster Parent Ombudsman or designee may not disclose, except to law
44 enforcement and state agencies, the identity of any foster parent, or individual acting on
45 behalf of a foster parent, without written consent signed by the foster parent, the legal

1 representative of the foster parent or an individual legally authorized to act on behalf of the
2 foster parent. The written consent must specify to whom the disclosure may be made.

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

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

10 “**SECTION 13.** (1) The Foster Parent Ombudsman Advisory Committee is established
11 consisting of five members appointed by the Governor and confirmed by the Senate under
12 ORS 171.562 and 171.565.

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

17 “(3) The members of the committee must:

18 “(a) Be residents of this state;

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

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

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

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

27 “(5) A majority of the members of the committee constitutes a quorum for the trans-
28 action of business. Decisions may be made by a majority of the quorum.

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

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

35 “**SECTION 14.** ORS 418.648 is amended to read:

36 “418.648. A foster parent has the right to:

37 “(1) Be treated with dignity, respect and trust as a member of a team, including respect for the
38 family values and routines of the foster parent.

39 “(2) Be included as a valued member of a team that provides care and planning for a foster child
40 placed in the home of the foster parent.

41 “(3) Receive support services, as resources permit, from the Department of Human Services that
42 are designed to assist in the care of the foster child placed in the home of the foster parent.

43 “(4) Be informed of any condition that relates solely to a foster child placed in the home of the
44 foster parent that may jeopardize the health or safety of the foster parent or other members of the
45 home or alter the manner in which foster care should be provided to the foster child. The informa-

1 tion shall include complete access to written reports, psychological evaluations and diagnoses that
2 relate solely to a foster child placed in the home of the foster parent provided that confidential in-
3 formation given to a foster parent must be kept confidential by the foster parent, except as neces-
4 sary to promote or to protect the health and welfare of the foster child and the community.

5 “(5) Have input into a permanency plan for a foster child placed in the home of the foster par-
6 ent.

7 “(6) Receive assistance from the department in dealing with family loss and separation when the
8 foster child leaves the home of the foster parent.

9 “(7) Be informed of all policies and procedures of the department that relate to the role of the
10 foster parent.

11 “(8) Be informed of how to receive services and to have access to department personnel or ser-
12 vice providers 24 hours a day, seven days a week.

13 “(9) Initiate an inactive referral status for a reasonable period of time, not to exceed 12 months,
14 to allow a foster parent relief from caring for foster children.

15 “(10) Not be discriminated against on the basis of race, color, religion, sex, sexual orientation,
16 national origin, age or disability.

17 “(11) Be notified of the foster parent’s right to limited participation in proceedings in the juve-
18 nile court and provided with an explanation of that right.

19 “(12) **Have a hotline telephone number that is available to the foster parent at all times**
20 **for the purpose of enabling the foster parent to make complaints and assert grievances re-**
21 **garding the foster parent’s duties.**

22 “(13) **Be provided with written contact information, that is updated as necessary and kept**
23 **current, for specific individuals whom the foster parent may contact regarding complaints,**
24 **concerns or violations of rights.**

25 “(14) **Be informed about the Office of the Foster Parent Ombudsman and have access to**
26 **the services described in section 10 of this 2017 Act.**

27
28 **“MANDATORY REPORTING**

29
30 **“SECTION 15.** ORS 419B.005, as amended by section 39, chapter 106, Oregon Laws 2016, is
31 amended to read:

32 “419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

33 “(1)(a) ‘Abuse’ means:

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

37 “(B) Any mental injury to a child, which shall include only observable and substantial impair-
38 ment of the child’s mental or psychological ability to function caused by cruelty to the child, with
39 due regard to the culture of the child.

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

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

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

44 “(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
45 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage

1 in the performing for people to observe or the photographing, filming, tape recording or other ex-
2 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
3 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
4 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
5 which is designed to serve educational or other legitimate purposes; and

6 “(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described
7 in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor
8 as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS
9 167.008.

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

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

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

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

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

20 “(b) ‘Abuse’ does not include reasonable discipline unless the discipline results in one of the
21 conditions described in paragraph (a) of this subsection.

22 “(2) ‘Child’ means an unmarried person who:

23 “(a) Is under 18 years of age; or

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

26 “(3) ‘Higher education institution’ means:

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

28 “(b) A public university listed in ORS 352.002;

29 “(c) The Oregon Health and Science University; and

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

31 “(4) ‘Law enforcement agency’ means:

32 “(a) A city or municipal police department.

33 “(b) A county sheriff’s office.

34 “(c) The Oregon State Police.

35 “(d) A police department established by a university under ORS 352.121 or 353.125.

36 “(e) A county juvenile department.

37 “(5) ‘Public or private official’ means:

38 “(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
39 including any intern or resident.

40 “(b) Dentist.

41 “(c) School employee, including an employee of a higher education institution.

42 “(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health
43 aide or employee of an in-home health service.

44 “(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
45 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local

1 health department, a community mental health program, a community developmental disabilities
2 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
3 or an alcohol and drug treatment program.

4 “(f) Peace officer.

5 “(g) Psychologist.

6 “(h) Member of the clergy.

7 “(i) Regulated social worker.

8 “(j) Optometrist.

9 “(k) Chiropractor.

10 “(L) Certified provider of foster care, or an employee thereof.

11 “(m) Attorney.

12 “(n) Licensed professional counselor.

13 “(o) Licensed marriage and family therapist.

14 “(p) Firefighter or emergency medical services provider.

15 “(q) A court appointed special advocate, as defined in ORS 419A.004.

16 “(r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

17 “(s) Member of the Legislative Assembly.

18 “(t) Physical, speech or occupational therapist.

19 “(u) Audiologist.

20 “(v) Speech-language pathologist.

21 “(w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
22 gations or discipline by the commission.

23 “(x) Pharmacist.

24 “(y) An operator of a preschool recorded program under ORS 329A.255.

25 “(z) An operator of a school-age recorded program under ORS 329A.257.

26 “(aa) Employee of a private agency or organization facilitating the provision of respite services,
27 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
28 109.056.

29 “(bb) Employee of a public or private organization providing child-related services or activities:

30 “(A) Including but not limited to youth groups or centers, scout groups or camps, summer or
31 day camps, survival camps or groups, centers or camps that are operated under the guidance,
32 supervision or auspices of religious, public or private educational systems or community service
33 organizations; and

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

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

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

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

41 “(ff) **The Foster Child Ombudsman or a designee appointed under section 5 or 6 of this**
42 **2017 Act.**

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

1 ties:

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

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

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

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

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

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

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

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

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

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

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

35 “[(j)] (10) Specify qualifications and duties of designees.

36 “[(k)] (11) Adopt rules necessary for carrying out ORS 441.402 to [441.414] **441.419**, after con-
37 sultation with the [Residential Facilities] **Long Term Care Ombudsman** Advisory Committee.

38 “(12) **Collect and compile data necessary to prepare the report submitted to the Governor**
39 **under ORS 182.500.**

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

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

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

45 “[(2)] (14) At least quarterly, [the Oregon Health Authority and] the Department of Human Ser-

1 vices shall provide the Long Term Care Ombudsman with a list of the number of licensed or certified
2 beds in each residential facility for which the ombudsman has responsibilities under this section.

3 “[(3) As used in this section, ‘administrative action’ means any action or decision made by an
4 owner, employee or agent of a residential facility or by a public agency that affects the services to
5 residents of the facility.]

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

7 “441.407. The Long Term Care Ombudsman shall establish procedures to maintain the
8 confidentiality of the records and files of residents of [residential] **long term care** facilities. These
9 procedures must meet the following requirements:

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

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

18 “**SECTION 20.** ORS 441.408 is amended to read:

19 “441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
20 into [residential] **long term care** facilities at any time considered necessary and reasonable by the
21 ombudsman or the designee for the purpose of:

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

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

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

25 “(d) Interviewing employees or agents of the facility;

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

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

28 “(2) The Long Term Care Ombudsman shall have access to any resident’s records, and to records
29 of any public agency necessary to **carry out** the duties of the ombudsman, including records on
30 patient abuse complaints made pursuant to ORS [430.735 to 430.765,] 441.630 to 441.680 and 441.995.
31 The provisions of ORS 192.553 to 192.581 are not intended to limit the access of the Long Term Care
32 Ombudsman to medical records of residents of [residential] **long term care** facilities. Designees may
33 have access to individual resident’s records, including medical records as authorized by the resident
34 or resident’s legal representative, if needed to investigate a complaint.

35 “**(3) The Long Term Care Ombudsman shall enter into confidentiality agreements with**
36 **the Department of Human Services and with the Oregon Health Authority permitting the**
37 **ombudsman and each designee to have access to electronic records of the department and**
38 **the authority that are necessary to carry out the duties of the ombudsman, if permitted by**
39 **state and federal law. The agreement must ensure that records obtained by the ombudsman**
40 **from the department or the authority that are confidential, privileged or otherwise protected**
41 **from disclosure are not further disclosed, except as permitted by state and federal law.**

42 “[(3)] (4) Entry and investigation authorized by this section shall be done in a manner that does
43 not disrupt significantly the providing of nursing, residential or other personal care or treatment to
44 residents.

45 “[4)] (5) The **Long Term Care** Ombudsman or the designee must show identification to the

1 person in charge of the facility. The resident shall have the right to refuse to communicate with the
2 ombudsman or the designee. The refusal shall be made directly to the ombudsman or the designee
3 and not through an intermediary.

4 “[5] (6) The resident shall have the right to participate in planning any course of action to be
5 taken on behalf of the resident by the **Long Term Care** Ombudsman or the designee.

6 “**SECTION 21.** ORS 441.409 is amended to read:

7 “441.409. (1) Following an investigation, the Long Term Care Ombudsman or the designee shall
8 report opinions or recommendations to the party or parties affected and, if appropriate, shall at-
9 tempt to resolve the complaint using informal techniques of mediation, conciliation and persuasion.
10 Complaints of conditions adversely affecting residents of [*residential*] **long term care** facilities, or
11 complaints of conditions threatening the safety or well-being of residents that cannot be resolved in
12 the manner described in this section, shall be referred to an appropriate state agency.

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

16 “**SECTION 22.** ORS 441.411 is amended to read:

17 “441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*residential*]
18 **long term care** facility in this state a written notice describing the procedures to follow in making
19 a complaint, including the address and telephone number of the ombudsman and local designee, if
20 any, and a poster describing the **Office of the** Long Term Care Ombudsman [*Program*] and providing
21 contact information.

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

26 “**SECTION 23.** ORS 441.412 is amended to read:

27 “441.412. (1) Any employee or agent of a [*residential*] **long term care** facility acting in good
28 faith in discussing resident care pursuant to ORS 441.408 shall have immunity from any civil liability
29 that might otherwise be incurred or imposed with respect to the making of such report.

30 “(2) Any employee or agent who makes a report pursuant to ORS 441.408 may not be subjected
31 to any retaliation by any official or other employee of a [*residential*] **long term care** facility solely
32 for making a report, including but not limited to restriction of otherwise lawful access to the facility
33 or to any resident of the facility, or, if an employee, to dismissal or harassment.

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

37 “**SECTION 24.** ORS 441.413 is amended to read:

38 “441.413. (1) The appointments of designees shall be made in consultation with a local screening
39 committee that may consist of but not be limited to persons representing:

40 “(a) The area agency on aging.

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

42 “(c) The local health department.

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

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

45 “(f) Local elected officials.

1 “(g) *The community mental health program director or local mental health authority.*]
2 “(h) *The community developmental disabilities program director.*]
3 “(i) *Representatives from the Oregon Health Authority.*]
4 “(2) To be appointed as a designee, a person must complete [*six days of*] **an** initial training and
5 attend quarterly training sessions that are approved by the Long Term Care Ombudsman and that
6 shall be coordinated and funded by the Department of Human Services [*and the Oregon Health Au-*
7 *thority*], subject to the availability of funds. Local screening committees shall be appointed by and
8 serve at the pleasure of the ombudsman.
9 “(3) Designees must sign a contract with [*the state*] **Office of the Long Term Care Ombuds-**
10 **man** that outlines the scope of their duties. In districts where a designee is an employee or agent
11 of a local entity, a three-party contract shall be executed. Violation of the contract is cause for the
12 termination of the appointment. A directory of all designees shall be maintained in the Office of the
13 Long Term Care Ombudsman.
14 “(4) The qualifications of designees shall include experience with [*residential*] **long term care**
15 facilities or residents or potential residents of [*residential*] **long term care** facilities, and the ability
16 to communicate well, to understand laws, rules and regulations, and to be assertive, yet objective.
17 “(5) Applicants who have experience in either social service, [*mental health, developmental disa-*
18 *bility services,*] gerontology, nursing or paralegal work shall be given preference in the appointment
19 of designees.
20 “(6) The contract shall include statements that the purpose of the **Office of the Long Term Care**
21 **Ombudsman** [*Program*] is to:
22 “(a) Promote rapport and trust between the residents and staff of the [*residential*] **long term**
23 **care** facilities and **the Long Term Care Ombudsman and designees;**
24 “(b) Assist residents with participating more actively in determining the delivery of services at
25 the facilities;
26 “(c) Serve as an educational resource;
27 “(d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate
28 agency; and
29 “(e) Ensure equitable resolution of problems.
30 “(7) The duties of the designees are to:
31 “(a) Visit each assigned [*residential*] **long term care** facility on a regular basis:
32 “(A) Upon arrival and departure, inform a specified staff member.
33 “(B) Review, with a specified staff member, any problems or concerns that need to be considered.
34 “(C) Visit individual residents and resident councils.
35 “(b) Maintain liaison with appropriate agencies and the Long Term Care Ombudsman.
36 “(c) Report, in writing, monthly to the Long Term Care Ombudsman.
37 “(d) Keep residents and staff informed of the **Office of the Long Term Care Ombudsman** [*Pro-*
38 *gram*].
39 “(e) Periodically review the patients’ bill of rights prescribed in ORS 441.605, 441.610 and
40 441.612 with residents, families, guardians, administrators and staff of [*residential*] **long term care**
41 facilities.
42 “(f) Perform other related duties as specified.
43 “**SECTION 25.** ORS 441.414 is amended to read:
44 “441.414. Nothing in ORS 441.402 to 441.419 shall affect the right of residents of a [*residential*]
45 **long term care** facility to see visitors of their choice.

1 “**SECTION 26.** ORS 441.416 is amended to read:

2 “441.416. (1) There is established a [*Residential Facilities Advisory Committee of 11 members to*
3 *be appointed in the following manner:*]

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

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

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

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

8 “[(e) *One person appointed by the Governor from each list of four names submitted by organiza-*
9 *tions for seniors, organizations for persons with mental illness and the Oregon Council on Develop-*
10 *mental Disabilities; and]*

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

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

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

18 “(3) The term of office of each member is four years. Before the expiration of the term of a
19 member, the [*appointing authority*] **Governor** shall appoint a successor whose term begins on July
20 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the
21 [*appointing authority*] **Governor** shall make an appointment to become immediately effective for the
22 unexpired term.

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

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

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

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

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

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

42 “**SECTION 27.** ORS 441.417 is amended to read:

43 “441.417. The [*Residential Facilities*] **Long Term Care Ombudsman** Advisory Committee shall:

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

45 “(2) Advise the Governor and the Legislative Assembly on the **Office of the** Long Term Care

1 Ombudsman [Program].

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

4 “**SECTION 28.** ORS 441.418 is amended to read:

5 “441.418. (1) A [residential] **long term care** facility that files a complaint against a designee
6 appointed under ORS 441.413 and objects to the action of the Long Term Care Ombudsman in re-
7 solving the complaint may appeal the ombudsman’s action to a panel of the [Residential Facilities]
8 **Long Term Care Ombudsman** Advisory Committee.

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

14 “(3) If the committee disagrees with the action of the **Long Term Care** Ombudsman, the com-
15 mittee may refer the resolution back to the ombudsman with instructions consistent with the federal
16 Older Americans Act or other applicable federal law to conform the ombudsman’s action in the
17 matter to the recommendations of the committee.

18 “**SECTION 29.** ORS 410.550 is amended to read:

19 “410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is
20 created, to consist of [12] **13** members. Appointed members shall be residents of [the State of
21 Oregon] **this state** and representative of the geographic locations of all long term care facilities and
22 [community-based care] **residential** facilities in this state. The members shall include:

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

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

26 “[b] **(c)** A representative of the Governor’s Commission on Senior Services, to be appointed by
27 the commission;

28 “[c] **(d)** A representative of the Oregon Disabilities Commission, to be appointed by the com-
29 mission;

30 “[d] **(e)** A representative of the Oregon Association of Area Agencies on Aging and Disabili-
31 ties, to be appointed by the Governor;

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

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

37 “[g] **(h)** [Two consumers of residential facilities] **One resident of a long term care facility,**
38 as defined in ORS 441.402, or [community-based care facilities or family members of such residents]
39 **family member of a resident,** to be appointed by the Speaker of the House of Representatives;

40 “**(i) One resident of a residential facility, as defined in section 30 of this 2017 Act, or**
41 **family member of a resident, to be appointed by the Speaker of the House of Representatives;**

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

45 “[i] **(k)** A representative of an assisted living facility or a residential care facility, to be ap-

1 pointed by the President of the Senate;

2 “[j] (L) A representative of an adult foster home, to be appointed by the President of the
3 Senate; and

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

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

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

10 “(4) The council shall:

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

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

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

16 “(d) Act in an advisory capacity to the department on matters pertaining to quality of long term
17 care facilities and [*community-based care*] **residential** facilities and reimbursement for long term
18 care services and community-based care services.

19
20 **“RESIDENTIAL FACILITIES OMBUDSMAN**

21
22 **“SECTION 30. As used sections 30 to 39 of this 2017 Act:**

23 **“(1) ‘Administrative action’ means an action, inaction or a decision, by an owner, em-
24 ployee or agent of a residential facility or by a state, local, social service or health agency,
25 that affects the health, safety, welfare or rights of residents of the facility.**

26 **“(2) ‘Designee’ means an individual appointed by the Residential Facilities Ombudsman
27 in accordance with section 39 of this 2017 Act.**

28 **“(3) ‘Legal representative’ means a person to whom a resident or a court has granted
29 legal authority to permit access to the resident’s personal information and medical records.**

30 **“(4) ‘Long Term Care Ombudsman’ means the individual appointed by the Governor un-
31 der ORS 441.403.**

32 **“(5) ‘Resident’ means an individual who resides in a residential facility.**

33 **“(6)(a) ‘Residential facility’ means one of the following:**

34 **“(A) A residential training facility, as defined in ORS 443.400.**

35 **“(B) A residential training home, as defined in ORS 443.400.**

36 **“(C) A residential treatment facility, as defined in ORS 443.400.**

37 **“(D) A residential treatment home, as defined in ORS 443.400.**

38 **“(E) A licensed adult foster home, as defined in ORS 443.705, that provides care to per-
39 sons with mental illness or developmental disabilities.**

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

41 **“(b) ‘Residential facility’ does not include a:**

42 **“(A) Facility housing persons committed under ORS 161.327; or**

43 **“(B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treat-
44 ment.**

45 **“SECTION 31. (1) The Office of the Residential Facilities Ombudsman is established in**

1 the Office of Oregon Ombudsmen. The Governor shall appoint the Residential Facilities
2 Ombudsman for a four-year term from a list of three nominees nominated by the Residential
3 Facilities Ombudsman Advisory Committee established under section 32 of this 2017 Act. A
4 vacancy shall be filled within 60 days in the same manner as an appointment is made.

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

7 “(3) The Residential Facilities Ombudsman shall have background and experience in the
8 following areas:

9 “(a) The fields of mental health or intellectual or developmental disabilities and behav-
10 ioral health care;

11 “(b) Working with community programs;

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

13 “(d) Working with and involvement in volunteer programs; and

14 “(e) Administrative and managerial experience.

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

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

19 “(b) Widely publicize the services, purpose and mode of operation of the Office of the
20 Residential Facilities Ombudsman.

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

23 “(d) Provide services to residents to assist them in protecting their health, safety, wel-
24 fare and rights.

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

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

32 “(g) Analyze, comment on and monitor the development and implementation of federal,
33 state and local laws and other governmental policies pertaining to the health, safety, welfare
34 and rights of residents.

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

37 “(i) Facilitate public comment on laws and policies that affect the health, safety and
38 welfare of residents.

39 “(j) Train designees.

40 “(k) Promote the development of organizations to advocate on behalf of residents of
41 residential facilities.

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

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

1 “(n) Assist residents, and individuals acting on their behalf, in locating and accessing
2 resources in the community and in connecting with local service providers.

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

6 “(p) Make recommendations for improvements in the functioning of the residential fa-
7 cility system in this state.

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

12 “(r) Work with residents to identify and recommend processes for making complaints
13 about service providers and entities.

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

15 “(t) Collect and compile data necessary to prepare the report submitted to the Governor
16 under ORS 182.500.

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

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

25 “(6) The authority and the department shall provide the Residential Facilities Ombuds-
26 man and the designees monthly, in a format specified by the ombudsman, demographic in-
27 formation about each resident in the residential facilities for which the ombudsman or
28 designee has responsibilities under this section.

29 “(7) All state agencies and service providers shall cooperate with and assist the Resi-
30 dential Facilities Ombudsman and designees in the performance of the ombudsman’s duties
31 and functions.

32 “SECTION 32. (1) The Residential Facilities Ombudsman Advisory Committee is estab-
33 lished consisting of five members appointed by the Governor, one of whom must be selected
34 by the Governor from a list of four names submitted by an organization for persons with
35 mental illness and one of whom must be selected by the Governor from a list of four names
36 submitted by the Oregon Council on Developmental Disabilities. Members are subject to
37 confirmation by the Senate under ORS 171.562 and 171.565.

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

42 “(3) The members of the committee must be residents of this state who are broadly
43 representative of persons residing in residential facilities, including members of racial and
44 ethnic minorities, who have knowledge and interest in the problems of individuals residing
45 in residential facilities and who are representative of all areas of this state and the demo-

1 graphics of groups served by the Residential Facilities Ombudsman.

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

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

8 “(6) A majority of the members of the committee constitutes a quorum for the trans-
9 action of business. Decisions may be made by a majority of the quorum.

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

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

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

17 “(a) Private and unimpeded access to residential facilities and residents at any time
18 considered necessary and reasonable by the ombudsman or the designee for the purpose of:

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

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

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

24 “(D) Interviewing employees or agents of the facility;

25 “(E) Consulting regularly with the facility administration; and

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

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

29 “(A) Residents’ records, including medical records, with the consent of a resident or a
30 resident’s representative.

31 “(B) For a resident who is unable to communicate consent and the resident’s legal rep-
32 resentative denies consent, access to the resident’s records, including medical records,
33 without consent if the ombudsman has reasonable cause to believe that the legal represen-
34 tative is not acting in the resident’s best interests.

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

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

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

42 “(2) The Residential Facilities Ombudsman shall:

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

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

1 **“(3) The Residential Facilities Ombudsman shall enter into confidentiality agreements**
2 **with the department and with the authority permitting the ombudsman and each designee**
3 **to have access to electronic records of the department and the authority that are necessary**
4 **to carry out the duties of the ombudsman. The agreement shall ensure that records obtained**
5 **by the ombudsman from the department or the authority that are confidential, privileged or**
6 **otherwise protected from disclosure are not further disclosed, except as permitted by state**
7 **and federal law.**

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

11 **“(a) The resident has no known legal representative:**

12 **“(A) The ombudsman shall seek to discern the outcome that the resident desires and**
13 **shall work to accomplish that outcome; or**

14 **“(B) If the ombudsman is unable to discern the resident’s desired outcome, it shall be**
15 **assumed that the resident desires to have the resident’s health, safety, welfare and rights**
16 **protected; or**

17 **“(b) The resident has a legal representative who refuses to consent to the investigation,**
18 **the ombudsman may proceed without consent if the ombudsman has reasonable cause to**
19 **believe that it is in the resident’s best interests.**

20 **“(2) A resident shall have the right to refuse to communicate with the ombudsman or**
21 **the designee. The refusal shall be made directly to the ombudsman or the designee and not**
22 **through an intermediary.**

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

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

31 **“(5) A resident or an individual who makes a complaint to the Residential Facilities**
32 **Ombudsman in good faith under this section, or who participates in an investigation of a**
33 **complaint, may not be subjected to a penalty, sanction or restriction or be denied any right,**
34 **privilege or benefit, on account of making the complaint or participating in the investigation**
35 **of the complaint.**

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

41 **“(7) In order to encourage residents and individuals acting on behalf of residents to**
42 **communicate with the Residential Facilities Ombudsman, any resident or individual acting**
43 **on behalf of a resident who makes a complaint to the ombudsman in good faith under this**
44 **section, or who participates in an investigation of a complaint, shall have immunity from any**
45 **civil or criminal liability that might otherwise be incurred or imposed on account of making**

1 the complaint or participating in the investigation of the complaint.

2 **“SECTION 35.** (1) The Residential Facilities Ombudsman shall prepare and distribute to
3 each residential facility in this state a written notice describing the procedures to follow in
4 making a complaint, including the address and telephone number of the ombudsman and a
5 poster describing the Office of the Residential Facilities Ombudsman and providing contact
6 information. The Department of Human Services shall facilitate the distribution of informa-
7 tion regarding the office to residents, providers and the public.

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

12 **“SECTION 36.** The Residential Facilities Ombudsman shall establish procedures to main-
13 tain the confidentiality of the records and files of residents. The procedures must meet the
14 following requirements:

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

18 **“(2)** The identity of any resident or individual providing information on behalf of the
19 resident shall be confidential. If a complaint becomes the subject of judicial proceedings, the
20 investigative information held by the Residential Facilities Ombudsman or the designee shall
21 be disclosed for the purpose of the proceedings if requested by the court.

22 **“SECTION 37.** The Residential Facilities Ombudsman appointed under section 31 of this
23 2017 Act may solicit and accept, gifts, grants and donations from public and private sources
24 for the purpose of carrying out sections 30 to 39 of this 2017 Act and the moneys shall be
25 deposited in the Office of Oregon Ombudsmen Account established under ORS 441.419.

26 **“SECTION 38.** The Residential Facilities Ombudsman shall establish procedures to main-
27 tain the confidentiality of the records and files of residents. The procedures must meet the
28 following requirements:

29 **“(1)** The Residential Facilities Ombudsman or a designee may not disclose, except to state
30 agencies or law enforcement, the identity of any resident or individual acting on behalf of a
31 resident without the consent of the resident, communicated in any manner the resident is
32 able to communicate, legal representative of the resident or the individual legally authorized
33 to act on behalf of the resident.

34 **“(2)** The identity of any resident or individual providing information on behalf of the
35 resident shall be confidential. If the complaint becomes the subject of judicial proceedings,
36 the investigative information held by the Residential Facilities Ombudsman or designee shall
37 be disclosed for the purpose of the proceedings if requested by the court.

38 **“SECTION 39.** (1) The Residential Facilities Ombudsman may appoint designees to serve
39 as representatives of the ombudsman in local communities. The ombudsman shall regularly
40 monitor the functions of designees.

41 **“(2)** The Residential Facilities Ombudsman shall specify qualifications and duties of
42 designees.

43 **“(3)** To be appointed as a designee, a person must complete an initial training and attend
44 quarterly training sessions that are approved by the Residential Facilities Ombudsman.

45 **“(4)** Designees must sign a contract with the Residential Facilities Ombudsman that

1 **outlines the scope of their duties.**

2 **“SECTION 40.** ORS 443.825 is amended to read:

3 **“443.825. All penalties recovered under ORS 443.790 to 443.815 shall be deposited:**

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

6 **“(2) In the [Long Term Care Ombudsman] Residential Facilities Ombudsman subaccount in**
7 **the Office of Oregon Ombudsmen Account established in ORS 441.419 if paid by an adult foster**
8 **home licensed to provide care to persons with mental illness or developmental disabilities.**

9
10 **“OFFICE OF THE OREGON PUBLIC GUARDIAN**

11
12 **“SECTION 41. Sections 42 to 47 of this 2017 Act are added to and made a part of ORS**
13 **125.675 to 125.687.**

14 **“SECTION 42. The Office of the Oregon Public Guardian is established to:**

15 **“(1) Provide guardianship and conservator services described in ORS 125.675 to 125.687**
16 **to persons in need of public guardian and conservator services who are located in areas of**
17 **this state where public guardian and conservator programs, services and other assistance**
18 **are inadequate or nonexistent; and**

19 **“(2) Identify and coordinate programs, services and other assistance that are available**
20 **statewide for such persons.**

21 **“SECTION 43. For the purpose of requesting a state or nationwide criminal records check**
22 **under ORS 181A.195, the Oregon Public Guardian may require the fingerprints of an em-**
23 **ployee of the Office of the Oregon Public Guardian, an applicant for employment with the**
24 **Office of the Oregon Public Guardian or a volunteer or party under contract with the Office**
25 **of the Oregon Public Guardian.**

26 **“SECTION 44. (1) There is established an Oregon Public Guardian Advisory Committee**
27 **consisting of five members appointed by the Governor, two of whom must have expertise in**
28 **the provision of guardianship, conservatorship and other fiduciary services for persons with**
29 **inadequate resources.**

30 **“(2) Members of the Oregon Public Guardian Advisory Committee are subject to confir-**
31 **mation by the Senate under ORS 171.562 and 171.565.**

32 **“(3) The term of office of each member is four years. Before the expiration of the term**
33 **of a member, the Governor shall appoint a successor whose term begins on July 1 next fol-**
34 **lowing. A member is eligible for reappointment. If there is a vacancy for any cause, the**
35 **Governor shall make an appointment to become immediately effective for the unexpired**
36 **term.**

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

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

42 **“(6) The committee shall meet at least once each month at a place, day and hour deter-**
43 **mined by the committee. The committee also shall meet at other times and places specified**
44 **by the call of the chairperson or of a majority of the members of the committee. The com-**
45 **mittee shall confer each month with the Oregon Public Guardian. All meetings are subject**

1 to ORS 192.610 to 192.690.

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

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

7 “(a) Moneys appropriated or otherwise transferred to the fund by the Legislative As-
8 sembly;

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

10 “(c) Amounts donated to the fund;

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

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

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

15 “(3) Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to
16 293.857.

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

20 “**SECTION 46.** (1) The Oregon Public Guardian Protected Person Trust Account is es-
21 tablished in the State Treasury separate and distinct from the General Fund and the Oregon
22 Public Guardian Fund. Moneys in the Oregon Public Guardian Protected Person Trust Ac-
23 count consists of moneys received on behalf of persons for whom the Oregon Public Guardian
24 has been appointed as a guardian or conservator. All moneys in the account are continuously
25 appropriated to the Oregon Public Guardian to be used for the benefit of a person for whom
26 the Oregon Public Guardian has been appointed as a guardian or conservator and on whose
27 behalf the Oregon Public Guardian has received moneys.

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

29 “(a) For the benefit of persons for whom the Oregon Public Guardian has been appointed
30 a guardian or conservator and on whose behalf the Oregon Public Guardian has received
31 moneys; and

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

33 “(3) The Oregon Public Guardian may establish subaccounts within the Oregon Public
34 Guardian Protected Person Trust Account when the Oregon Public Guardian determines that
35 subaccounts are necessary or desirable. Interest earned by the account or subaccounts, if
36 any, shall accrue to the benefit of the account or subaccounts.

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

39 “**SECTION 48.** ORS 125.675 is amended to read:

40 “125.675. For purposes of ORS 125.675 to 125.687:

41 “(1) ‘Client’ means a person who receives public guardian and conservator services from the
42 Oregon Public Guardian [*and Conservator*].

43 “(2) ‘Deputy public guardian [*and conservator*]’ means a person who is employed by or under
44 contract with the Oregon Public Guardian [*and Conservator*], who is certified by the Oregon Public
45 Guardian [*and Conservator*] and who provides services as a fiduciary [*appointed by the court to cli-*

1 ents] under ORS 125.675 to 125.687.

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

6 “**SECTION 49.** ORS 125.678 is amended to read:

7 “125.678. (1) The [*Long Term Care Ombudsman appointed under ORS 441.403, in consultation*
8 *with the Residential Facilities Advisory Committee,*] **Governor** shall appoint the Oregon Public
9 Guardian [*and Conservator in the office of the Long Term Care Ombudsman*] for a four-year term.
10 The Oregon Public Guardian [*and Conservator*] serves at the pleasure of the [*Long Term Care Om-*
11 *budsman and may be removed by the Long Term Care Ombudsman*] **Governor and may be removed**
12 for good cause. If there is a vacancy for any cause, the [*Long Term Care Ombudsman*] **Governor**
13 shall make an appointment within 60 days. The Oregon Public Guardian [*and Conservator*] shall re-
14 ceive a salary as fixed by the [*Long Term Care Ombudsman*] **Governor** and be reimbursed for all
15 reasonable travel and other expenses incurred in the performance of official duties.

16 “(2) The Oregon Public Guardian [*and Conservator*] shall be responsible for carrying out the
17 powers, duties and functions of the Oregon Public Guardian [*and Conservator*] pursuant to ORS
18 125.675 to 125.687[, *within the office of the Long Term Care Ombudsman, and subject to the direction,*
19 *supervision and control of the Long Term Care Ombudsman*].

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

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

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

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

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

31 “(4) [*The Long Term Care Ombudsman may hire or contract with staff to serve in the office of the*
32 *Long Term Care Ombudsman*] **The Oregon Public Guardian may hire or contract with staff to**
33 **serve in the Office of the Oregon Public Guardian** as necessary to carry out the powers, duties
34 and functions of the [*Long Term Care Ombudsman in supervising, monitoring, advising and support-*
35 *ing the Oregon Public Guardian and Conservator as required under ORS 441.406*] **Office of the**
36 **Oregon Public Guardian.**

37 “(5)(a) The Oregon Public Guardian [*and Conservator*] may delegate the exercise or discharge
38 of any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian
39 [*and Conservator*] to a deputy public guardian [*and conservator*], staff person or volunteer hired by
40 or under contract with the Oregon Public Guardian [*and Conservator*] as appropriate for the purpose
41 of conducting an official act in the name of the Oregon Public Guardian [*and Conservator*]. The of-
42 ficial act of any person acting in the name of the Oregon Public Guardian [*and Conservator*] by the
43 authority of the Oregon Public Guardian [*and Conservator*] is an official act of the Oregon Public
44 Guardian [*and Conservator*].

45 “(b) **Notwithstanding paragraph (a) of this subsection, a court may not appoint a deputy**

1 **public guardian as a fiduciary in a proceeding under ORS 125.675 to 125.687 but shall appoint**
2 **the Oregon Public Guardian as the fiduciary in the proceeding.**

3 “(6) The Oregon Public Guardian [*and Conservator*] may solicit and accept gifts, grants and do-
4 nations from public and private sources for the purpose of carrying out the provisions of ORS
5 125.675 to 125.687, which moneys shall be deposited in the [*Long Term Care Ombudsman Account*]
6 **Oregon Public Guardian Fund** established under [*ORS 441.419*] **section 45 of this 2017 Act.**

7 “**SECTION 50.** ORS 125.680 is amended to read:

8 “125.680. The Oregon Public Guardian [*and Conservator*] shall:

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

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

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

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

18 “(5) Develop and implement training and educational materials for deputy public guardians [*and*
19 *conservators*].

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

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

26 “(8) Cooperate with offices of county public guardian and conservator operating under ORS
27 125.700.

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

30 “(10) Make recommendations to the Legislative Assembly for policy and legislation regarding
31 implementation, improvement and expansion of public guardian and conservator services in this
32 state.

33 “**SECTION 51.** ORS 125.683 is amended to read:

34 “125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian
35 [*and Conservator*] shall conduct a needs assessment for a person who claims or is claimed not to
36 have relatives or friends willing or able to assume the duties of guardianship or conservatorship and
37 who claims or is claimed to lack the financial resources to obtain a private guardian or conservator.
38 The purpose of the needs assessment is to determine the person’s eligibility to receive public
39 guardian and conservator services and to determine the appropriateness of filing a petition for the
40 appointment of a fiduciary or other pleading on behalf of the person in a court having probate ju-
41 risdiction. The **needs** assessment shall, at a minimum:

42 “(a) Assess the person’s capacity to:

43 “(A) Care for the person’s own safety;

44 “(B) Manage the person’s own financial affairs; and

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

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

3 “(c) Determine whether the [*available*] information **that is available** about the person is suffi-
4 cient to support a finding that the person is incapacitated or financially incapable[,] and the entry
5 of a court order for the appointment of a fiduciary under ORS 125.010;

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

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

11 “(f) Determine how best to provide public guardian and conservator services to the person that
12 are least restrictive to the person’s liberty, that are least intrusive to the person and that provide
13 for the greatest degree of independence that the person is capable of exercising.

14 **“(2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a resi-
15 dential facility as defined in section 30 of this 2017 Act, the nursing home or residential fa-
16 cility shall provide the Oregon Public Guardian access to the person’s records as is necessary
17 to conduct the needs assessment required under this section.**

18 **“(b) Any other public agency that has provided or is providing care or services to the
19 person shall disclose to the Oregon Public Guardian, upon request, a minimum amount of
20 information about the person for whom the needs assessment is being conducted, including
21 protected health information as defined in ORS 192.556 and financial information, as is rea-
22 sonably necessary to prevent or lessen a serious and imminent threat to the health or safety
23 of the person who is the subject of the needs assessment. For purposes of this paragraph, a
24 request from the Oregon Public Guardian for the purpose of conducting a needs assessment
25 is presumed to be a situation that will prevent or lessen a serious and imminent threat to
26 the health or safety of the person.**

27 **“(c) Any health care provider not identified in paragraph (a) or (b) of this subsection may
28 disclose protected health information to the Oregon Public Guardian in accordance with 45
29 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety
30 of a person if the health care provider, in good faith, believes the disclosure is necessary to
31 prevent or lessen the threat. For purposes of this paragraph, a request from the Oregon
32 Public Guardian for disclosure under this paragraph for the purposes of conducting a needs
33 assessment, or the good faith belief and disclosure of the health care provider under this
34 paragraph, are presumed to be situations that will prevent or lessen a serious and imminent
35 threat to the health or safety of the person.**

36 “[2] (3) For each person determined to be eligible for public guardian and conservator services
37 under this section, the Oregon Public Guardian [*and Conservator*] shall develop a written plan set-
38 ting forth the type and duration of services to be provided by the Oregon Public Guardian [*and*
39 *Conservator*]. The plan shall be included in any nonemergency petition or pleading filed with the
40 court.

41 **“SECTION 52.** ORS 125.685 is amended to read:

42 **“125.685. (1) A deputy public guardian [*and conservator*] providing public guardian and
43 conservator services under ORS 125.675 to 125.687[:]**

44 **“[*a*] must be certified as a deputy public guardian [*and conservator*] by the Oregon Public
45 Guardian. [*and Conservator; and*]**

1 “(b) If appointed by the court as public guardian and conservator for a client, shall serve as
2 provided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise in ORS
3 125.675 to 125.687.]

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

7 “(3) Volunteers:

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

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

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

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

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

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

20 “**SECTION 53.** ORS 125.687 is amended to read:

21 “125.687. (1) A court may not appoint the Oregon Public Guardian [*and Conservator or a deputy*
22 *public guardian and conservator*] as a fiduciary for a person unless the Oregon Public Guardian [*and*
23 *Conservator or deputy public guardian and conservator*] has petitioned for or consented to the ap-
24 pointment. **If appointed as a fiduciary by the court, the Oregon Public Guardian, and any**
25 **deputy public guardian, shall serve as provided in this chapter and ORS 127.005 and 127.015,**
26 **except as expressly stated otherwise in ORS 125.675 to 125.687 or by order of the court.**

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

33 “(3) The court may not charge **the Oregon Public Guardian** a fee for the filing of a petition
34 or any other pleading under this chapter [*by the Oregon Public Guardian and Conservator or a dep-*
35 *uty public guardian and conservator*] when the filing is made in connection with the provision of
36 public guardian [*and conservator*] services under ORS 125.675 to 125.687.

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

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

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

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

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

5 “(h) If the respondent is receiving moneys paid or payable by the United States through the
6 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
7 fairs regional office that has responsibility for the payments to the protected person.

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

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

14 “(k) If the respondent is committed to the legal and physical custody of the Department of
15 Corrections, the Attorney General and the superintendent or other officer in charge of the facility
16 in which the respondent is confined.

17 “(L) If the respondent is a foreign national, the consulate for the respondent’s country.

18 “(m) Any other person that the court requires.

19 “(3) Notice of a motion for the termination of the protective proceedings, for removal of a
20 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary’s
21 actions or for protective orders in addition to those sought in the petition must be given by the
22 person making the motion to the following persons:

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

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

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

27 “(d) If the protected person is receiving moneys paid or payable by the United States through
28 the Department of Veterans Affairs, a representative of the United States Department of Veterans
29 Affairs regional office that has responsibility for the payments to the protected person.

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

33 “(f) Any other person that the court requires.

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

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

43 “(6) If the Department of Human Services is nominated as guardian for the purpose of consent-
44 ing to the adoption of a minor, the notice provided for in this section must also be given to the
45 minor’s brothers, sisters, aunts, uncles and grandparents.

1 “(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a
2 petition for the appointment of a guardian for a person who is alleged to be incapacitated must be
3 given by the petitioner to the following persons:

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

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

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

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

15 “(a) Any attorney who represented the protected person at any time during the protective pro-
16 ceeding.

17 “(b) If the protected person is a resident of a nursing home or residential facility, or if the mo-
18 tion seeks authority to place the protected person in a nursing home or residential facility, the Of-
19 fice of the Long Term Care Ombudsman **or the Office of the Residential Facilities Ombudsman.**

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

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

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

27 “**SECTION 57.** ORS 125.075 is amended to read:

28 “125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected
29 person may present objections to a petition or to a motion in a protective proceeding, including but
30 not limited to:

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

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

33 “(c) Any other person the court may allow.

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

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

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

4 “(a) The respondent or the protected person;

5 “(b) The Office of the Long Term Care Ombudsman **or the Office of the Residential Facilities**
6 **Ombudsman**; or

7 “(c) The system described in ORS 192.517 (1).

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

10 “**SECTION 58.** ORS 125.320 is amended to read:

11 “125.320. (1) A guardian may not authorize the sterilization of the protected person.

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

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

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

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

23 “(A) Any attorney who represented the protected person at any time during the protective pro-
24 ceeding.

25 “(B) If the protected person is a resident of a nursing home or residential facility, or if the no-
26 tice states the intention to place the protected person in a nursing home or residential facility, the
27 Office of the Long Term Care Ombudsman **or the Office of the Residential Facilities**
28 **Ombudsman**.

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

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

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

39 “(f) The requirement that notice be served on an attorney for a protected person under para-
40 graph (c)(A) of this subsection does not impose any responsibility on the attorney receiving the no-
41 tice to represent the protected person in the protective proceeding.

42 “**SECTION 59.** ORS 125.410 is amended to read:

43 “125.410. (1) Except as provided in subsection (2) of this section, the court shall require a
44 conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator
45 according to law, with sureties as specified by the court. Unless otherwise directed, the bond must

1 be in the amount of the aggregate capital value of the property of the estate in the control of the
2 conservator plus one year's estimated income minus the value of securities and money deposited
3 under arrangements requiring an order of the court for their removal and the value of any real
4 property that the conservator, by express limitation of power, lacks power to sell or convey without
5 court authorization.

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

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

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

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

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

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

20 “(7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the
21 conservator shall execute and file in the protective proceeding a new bond before the cancellation
22 date specified by the surety. The new bond shall be in the amount and subject to those conditions
23 that may be required by the court. If the conservator fails to file a new bond, the authority of the
24 conservator ends on the date specified by the surety for cancellation of the bond. The letters of
25 conservatorship issued to the conservator are void from that date, and the conservator must make
26 and file the final accounting of the conservator.

27 “**SECTION 60.** ORS 443.455 is amended to read:

28 “443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil
29 penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705
30 to 441.745.

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

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

37 “(4) If the department or authority investigates and makes a finding of abuse arising from de-
38 liberate or other than accidental action or inaction that is likely to cause a negative outcome by a
39 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the
40 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose
41 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed
42 \$15,000 in any 90-day period. As used in this subsection:

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

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

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

4 “(d) ‘Sexual abuse’ means any form of sexual contact between an employee of a residential fa-
5 cility or a person providing services in the residential facility and a resident of that facility, in-
6 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual
7 harassment.

8 “(5) Civil penalties recovered from a residential training facility, residential training home, res-
9 idential treatment facility or residential treatment home shall be deposited in the [*Long Term Care*
10 *Ombudsman*] **appropriate subaccount in the Office of Oregon Ombudsmen** Account established
11 in ORS 441.419.

12 “**SECTION 61.** ORS 443.738 is amended to read:

13 “443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers
14 and substitute caregivers for adult foster homes shall satisfactorily meet all educational require-
15 ments established by the licensing agency. After consultation with representatives of providers,
16 educators, residents’ advocates and the [*Long Term Care*] **Residential Facilities** Ombudsman, the
17 licensing agency shall adopt by rule standards governing the educational requirements. The rules
18 shall require that a person may not provide care to any resident prior to acquiring education or
19 supervised training designed to impart the basic knowledge and skills necessary to maintain the
20 health, safety and welfare of the resident. Each provider shall document compliance with the edu-
21 cational requirements for persons subject to the requirements.

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

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

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

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

34 “(3) After consultation with representatives of providers, educators, residents’ advocates and the
35 [*Long Term Care*] **Residential Facilities** Ombudsman, the licensing agency may adopt by rule ex-
36 ceptions to the training requirements of subsections (1) and (2) of this section for persons who are
37 appropriately licensed medical care professionals in Oregon or who possess sufficient education,
38 training or experience to warrant an exception. The licensing agency may not make any exceptions
39 to the testing requirements.

40 “(4) The licensing agency may permit a person who has not completed the training or passed the
41 test required in subsection (2)(a) and (b) of this section to act as a resident manager until the
42 training and testing are completed or for 60 days, whichever is shorter, if the licensing agency de-
43 termines that an unexpected and urgent staffing need exists. The licensed provider must notify the
44 licensing agency of the situation and demonstrate that the provider is unable to find a qualified
45 resident manager, that the person has met the requirements for a substitute caregiver for the adult

1 foster home and that the provider will provide adequate supervision.

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

4 “(6) Providers shall make available at least six hours of activities each week which are of in-
5 terest to the residents, not including television or movies. The licensing agency shall make infor-
6 mation about resources for activities available to providers upon request. Providers or substitute
7 caregivers shall be directly involved with residents on a daily basis.

8 “(7) Providers shall give at least 30 days’ written notice to the residents, and to the legal rep-
9 resentative, guardian or conservator of any resident, before selling, leasing or transferring the adult
10 foster home business or the real property on which the adult foster home is located. Providers shall
11 inform real estate licensees, prospective buyers, lessees and transferees in all written communi-
12 cations that the license to operate an adult foster home is not transferable and shall refer them to
13 the licensing agency for information about licensing.

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

22 “(9) Chemical and physical restraints may be used only after considering all other alternatives
23 and only when required to treat a resident’s medical symptoms or to maximize a resident’s physical
24 functioning. Restraints may not be used for discipline of a resident or for the convenience of the
25 adult foster home. Restraints may be used only as follows:

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

28 “(b) Physical restraints may be used only pursuant to a qualified practitioner’s order that spec-
29 ifies the type, circumstances and duration of use in accordance with rules adopted by the licensing
30 agency. The rules adopted by the licensing agency relating to physical restraints shall include
31 standards for use and training.

32 “(10) If the physical characteristics of the adult foster home do not encourage contact between
33 caregivers and residents and among residents, the provider shall demonstrate how regular positive
34 contact will occur. Providers may not place residents who are unable to walk without assistance in
35 a basement, split-level, second story or other area that does not have an exit at ground level.
36 Nonambulatory residents shall be given first floor rooms.

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

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

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

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

10 “(13) Any lessor of a building in which an adult foster home is located may not interfere with
11 the admission, discharge or transfer of any resident in the adult foster home unless the lessor is a
12 provider or coprovider on the license.

13 “**SECTION 62.** ORS 443.767 is amended to read:

14 “443.767. (1) When the licensing agency receives a complaint that alleges that a resident of a
15 licensed adult foster home has been injured, abused or neglected, and that the resident’s health or
16 safety is in imminent danger, or that the resident has died or been hospitalized, the investigation
17 shall begin immediately after the complaint is received. If the investigator determines that the
18 complaint is substantiated, the licensing agency shall take appropriate corrective action imme-
19 diately.

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

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

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

34 “(5)(a) The licensing agency shall mail a copy of the investigation report within seven days of
35 the completion of the report to:

36 “(A) The complainant, unless the complainant requests anonymity;

37 “(B) The resident, and any person designated by the resident to receive information concerning
38 the resident;

39 “(C) The facility; and

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

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

43 “(6)(a) The complaint and the investigation report shall be available to the public at the local
44 office of the licensing agency or the type B area agency [on aging], if appropriate. When the li-
45 censing agency or type B area agency [on aging] concludes the investigation of a complaint, the li-

1 censing agency or type B area agency [on aging] shall clearly designate the outcome of the
2 complaint investigation and make the designation available to the public together with the com-
3 plaint and the investigation report.

4 “(b) As used in this subsection, ‘area agency’ has the meaning given that term in ORS
5 410.040.

6 “(7) A copy of the report shall be forwarded to the licensing agency whether or not the inves-
7 tigation report concludes that the complaint is substantiated.

8 “**SECTION 63.** ORS 476.030 is amended to read:

9 “476.030. (1) The State Fire Marshal shall enforce all statutes, and make rules relating to:

10 “(a) The prevention of fires.

11 “(b) The storage and use of combustibles and explosives.

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

19 “(d) Standards for equipment used for fire protection purposes within this state including
20 standard thread for fire hose couplings and hydrant fittings.

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

23 “(3) If, in the opinion of the State Fire Marshal, a governmental subdivision of the state has
24 enacted adequate regulations generally conforming to state and national standards concerning fire
25 prevention, fire safety measures and building construction requirements for safety, and if the gov-
26 ernmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal
27 may exempt the area subject to such regulation either partially or fully from the statutes, rules and
28 regulations administered by the State Fire Marshal. Prior to adoption of any such exemption, the
29 State Fire Marshal may request from the Department of Public Safety Standards and Training con-
30 sideration of and recommendations regarding the exemption. The exemption may extend for a two-
31 year period, and may be renewed from time to time, but may be canceled by the State Fire Marshal
32 following 30 days’ written notice if the State Fire Marshal finds that the governmental subdivision’s
33 regulations or enforcement thereof are not reasonably sufficient. The governmental subdivision shall
34 furnish a copy of such regulations to the State Fire Marshal and shall file with the State Fire
35 Marshal any amendment thereto within 30 days before the effective date of such amendment. The
36 State Fire Marshal shall designate a person or division within such governmental subdivision as an
37 approved authority for exercising functions relating to fire prevention, fire safety measures and
38 building construction. Upon request of a local official having enforcement responsibility and a
39 showing of unusual fire hazard or other special circumstances, the State Fire Marshal shall make
40 investigation and appropriate recommendations.

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

44 “(5) The State Fire Marshal shall provide training in fire safety inspection to the Department
45 of Human Services, area agencies, the Oregon Health Authority, community mental health programs,

1 developmental disabilities programs and designees of the Long Term Care Ombudsman **and the**
2 **Residential Facilities Ombudsman**. If an adult foster home has been inspected by the Department
3 of Human Services, the Oregon Health Authority, an area agency, a community mental health pro-
4 gram or a developmental disabilities program and the agency conducting the inspection reasonably
5 believes that the adult foster home is not in compliance with applicable fire safety rules, the agency
6 conducting the inspection may request the State Fire Marshal to inspect or cause an inspection to
7 be made. If a designee of the [*Long Term Care*] **Residential Facilities Ombudsman**, in the course
8 of visiting an adult foster home, believes that the adult foster home is not in compliance with ap-
9 plicable fire safety rules, the designee shall report the problem to the appropriate agency to request
10 a fire safety inspection by the office of the State Fire Marshal or by a designated representative of
11 the office of the State Fire Marshal.

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

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

18 “(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705.

19 “(b) ‘Area agency’ has the meaning given that term in ORS 410.040.

20 “(c) ‘Community mental health program’ means a program established under ORS 430.620 (1)(b).

21 “(d) ‘Developmental disabilities program’ means a program established under ORS 430.620 (1)(a).

22
23 **“OPERATIVE DATE**

24
25 **“SECTION 64. Sections 1, 3, 5 to 8, 10 to 13, 30 to 39 and 42 to 47 of this 2017 Act and the**
26 **amendments to statutes by sections 2, 9, 14 to 29, 40 and 48 to 63 of this 2017 Act become**
27 **operative on January 1, 2018.**

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

33
34 **“CAPTIONS**

35
36 **“SECTION 66. The unit captions used in this 2017 Act are provided only for the conven-**
37 **ience of the reader and do not become part of the statutory law of this state or express any**
38 **legislative intent in the enactment of this 2017 Act.**

39
40 **“EMERGENCY CLAUSE**

41
42 **“SECTION 67. This 2017 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
44 **on its passage.”**