

(To Resolve Conflicts)

## C-Engrossed Senate Bill 58

Ordered by the House May 31  
Including Senate Amendments dated April 24 and May 15 and House  
Amendments dated May 31 to resolve conflicts

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Long-Term Care Ombudsman)

### SUMMARY

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

Directs Long Term Care Ombudsman to appoint Residential Facilities Ombudsman within office of Long Term Care Ombudsman. Specifies duties of Residential Facilities Ombudsman. Renames Residential Facilities Advisory Committee as Residential Ombudsman and Public Guardianship Advisory Board.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

Relating to the Long Term Care Ombudsman; creating new provisions; amending ORS 125.678, 410.550, 441.402, 441.403, 441.406, 441.407, 441.408, 441.409, 441.411, 441.412, 441.413, 441.414, 441.416, 441.417, 441.418, 441.419, 443.738, 443.767 and 476.030; repealing section 10, chapter \_\_\_, Oregon Laws 2017 (Enrolled Senate Bill 57); and declaring an emergency.

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

### RESIDENTIAL FACILITIES OMBUDSMAN

#### SECTION 1. As used in sections 1 to 8 of this 2017 Act:

(1) **“Administrative action” means an action, inaction or decision by an owner, employee or agent of a residential facility or by a state, local, social service or health agency that could affect the health, safety, welfare or rights of residents of the facility.**

(2) **“Designee” means an individual appointed by the Residential Facilities Ombudsman in accordance with section 4 of this 2017 Act.**

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

(4) **“Long Term Care Ombudsman” means the individual appointed by the Governor under ORS 441.403.**

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

(6)(a) **“Residential facility” means one of the following:**

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

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

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

1 (C) A licensed adult foster home as defined in ORS 443.705 that serves persons with  
2 mental illness or developmental disabilities.

3 (D) A developmental disability child foster home, as defined in ORS 443.830.

4 (E) A residential treatment facility, as defined in ORS 443.400.

5 (F) A residential treatment home, as defined in ORS 443.400.

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

7 (A) Secured facility housing persons committed under ORS 161.327; or

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

10 (7) "Residential Facilities Ombudsman Program" means the services provided by the  
11 Residential Facilities Ombudsman.

12 **SECTION 2.** (1) The Long Term Care Ombudsman, in consultation with the Residential  
13 Ombudsman and Public Guardianship Advisory Board established under ORS 441.416, shall  
14 appoint a Residential Facilities Ombudsman for a four-year term. The Residential Facilities  
15 Ombudsman serves at the pleasure of the Long Term Care Ombudsman and may be removed  
16 by the Long Term Care Ombudsman for cause. The Long Term Care Ombudsman shall fill  
17 any vacancy within 60 days. The salary of the Residential Facilities Ombudsman shall be de-  
18 termined by the Long Term Care Ombudsman. The Residential Facilities Ombudsman shall  
19 be reimbursed for all reasonable travel and other expenses incurred in the performance of  
20 the ombudsman's official duties.

21 (2) The Residential Facilities Ombudsman may, subject to the approval of the Long Term  
22 Care Ombudsman, hire or contract with volunteers, staff, deputy ombudsmen and other  
23 qualified individuals as necessary to perform the duties of the ombudsman.

24 (3) The Residential Facilities Ombudsman shall:

25 (a) Identify, investigate and resolve complaints made by or on behalf of residents about  
26 administrative actions.

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

30 (c) Widely publicize the Residential Facilities Ombudsman's services, purpose and mode  
31 of operation.

32 (d) Undertake, participate in or cooperate with persons and agencies in conferences, in-  
33 quiries, meetings or studies that may lead to improvements in the functioning of residential  
34 facilities.

35 (e) Work closely with associations and citizen groups in this state and the state pro-  
36 tection and advocacy system under ORS 192.517.

37 (f) Provide services to residents to assist them in protecting their health, safety, welfare  
38 and rights.

39 (g) Ensure that residents have regular, timely, private and unimpeded access to the  
40 Residential Facilities Ombudsman's services and that a resident or an individual acting on  
41 behalf of a resident who files a complaint receives a timely response to the complaint from  
42 the ombudsman or a designee.

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

1 (i) Analyze, comment on and monitor the development and implementation of federal,  
2 state and local laws and other governmental policies pertaining to the health, safety, welfare  
3 and rights of residents.

4 (j) Recommend any changes to state or local laws to improve the health, safety, welfare  
5 and rights of residents.

6 (k) Facilitate public comment on laws and policies that affect the health, safety, welfare  
7 and rights of residents.

8 (L) Train designees.

9 (m) Promote the development of organizations to advocate on behalf of residents of res-  
10 idential facilities.

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

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

15 (p) Engage the participation of residents in general studies, conferences, inquiries or  
16 meetings related to residential care in this state.

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

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

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

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

26 (u) Adopt rules necessary for carrying out sections 1 to 8 of this 2017 Act, in accordance  
27 with ORS chapter 183, in consultation with the Long Term Care Ombudsman and the Resi-  
28 dential Ombudsman and Public Guardianship Advisory Board.

29 **SECTION 3.** (1) The Oregon Health Authority, the Department of Human Services and  
30 the Residential Facilities Ombudsman shall agree to a format for the authority and the de-  
31 partment to provide monthly to the ombudsman updated demographic and licensing infor-  
32 mation regarding each residential facility for which the Residential Facilities Ombudsman  
33 has responsibilities under this section.

34 (2) All state agencies, their representatives and service providers shall cooperate with  
35 and assist the Residential Facilities Ombudsman and designees in the performance of the  
36 ombudsman's duties and functions.

37 **SECTION 4.** (1) The Residential Facilities Ombudsman shall, in consultation with the  
38 Long Term Care Ombudsman, appoint designees to serve as representatives of the ombuds-  
39 man in local communities. The ombudsman shall regularly monitor the functions of  
40 designees.

41 (2) The Residential Facilities Ombudsman shall prescribe the qualifications of designees  
42 by rule.

43 (3) To be appointed as a designee, a person must complete an initial training prescribed  
44 by the Residential Facilities Ombudsman by rule and attend required continuing educational  
45 training sessions that are approved by the ombudsman.

1 (4) Designees must sign a contract with the Residential Facilities Ombudsman that out-  
2 lines the scope of their duties. Violation of the contract is cause for terminating the ap-  
3 pointment of a designee.

4 **SECTION 5. (1) The Residential Facilities Ombudsman and each designee shall:**

5 (a) Have private and unimpeded access to residential facilities and residents at any time  
6 considered necessary and reasonable by the ombudsman or the designee for the purpose of:

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

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

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

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

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

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

15 (b) Notwithstanding ORS 192.553 to 192.581, have access to all of the following if neces-  
16 sary to investigate a complaint:

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

19 (B) For a resident who is unable to communicate consent and the resident's legal repre-  
20 sentative denies consent, access to the resident's records without consent if the ombudsman  
21 has reasonable cause to believe that the legal representative is not acting in the resident's  
22 best interests.

23 (C) For a resident who is unable to communicate consent and does not have a legal rep-  
24 resentative, access to the resident's records, including medical records, without consent if  
25 the ombudsman or designee believes that the information is necessary for the investigation  
26 of the complaint.

27 (D) Records of any public agency, including abuse reports maintained under ORS 430.757.

28 (c) Have access to, upon request, copies of all licensing and certification records, in-  
29 cluding records of corrective actions, maintained by the Department of Human Services or  
30 the Oregon Health Authority with respect to residential facilities.

31 (d) Have access to the administrative records, policies and documents of residential fa-  
32 cilities to which residents or the general public has access.

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

35 (f) Show identification to the person in charge of a facility prior to entering the facility.

36 (2) The Residential Facilities Ombudsman shall enter into confidentiality agreements with  
37 the department and with the authority permitting the ombudsman and each designee to have  
38 access to electronic records of the department and the authority that are necessary to carry  
39 out the duties of the ombudsman. The agreement must ensure that records obtained by the  
40 ombudsman from the department or the authority that are confidential, privileged or other-  
41 wise protected from disclosure are not further disclosed, except as permitted by state and  
42 federal law.

43 **SECTION 6. (1) If a complaint is made on behalf of a resident who has limited or no**  
44 **decision-making capacity and is unable to communicate consent for the Residential Facilities**  
45 **Ombudsman to investigate the complaint, and:**

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

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

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

7 (b) The resident has a legal representative who refuses to provide consent to the inves-  
8 tigation, the ombudsman may proceed without consent if the ombudsman has reasonable  
9 cause to believe that it is in the resident's best interests.

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

13 (3) Following an investigation of a complaint, the Residential Facilities Ombudsman or a  
14 designee shall report the ombudsman's findings and conclusions to the resident who made  
15 the complaint and to a complainant acting on behalf of a resident. If the ombudsman or  
16 designee finds conditions threatening the health, safety or welfare of a resident that cannot  
17 be resolved informally, the ombudsman or designee shall refer the findings to the Depart-  
18 ment of Human Services, the Oregon Health Authority or law enforcement officials.

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

21 (5) A resident or an individual who makes a complaint to the Residential Facilities Om-  
22 budsman under this section, or who participates in an investigation of a complaint, may not  
23 be subjected to a penalty, sanction or restriction or be denied any right, privilege or benefit  
24 on account of making the complaint or participating in the investigation of the complaint.

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

30 (7) In order to encourage residents and individuals acting on behalf of residents to com-  
31 municate with the Residential Facilities Ombudsman or designee, any resident or individual  
32 acting on behalf of a resident who makes a complaint to the Residential Facilities Ombuds-  
33 man in good faith under this section or who participates in an investigation of a complaint  
34 shall have immunity from any civil or criminal liability that might otherwise be incurred or  
35 imposed with respect to the communication.

36 SECTION 7. (1) The Residential Facilities Ombudsman shall prepare and distribute to  
37 each residential facility in this state a written notice describing the procedures to follow in  
38 making a complaint, including the address and telephone number of the ombudsman and  
39 designee, if any, and a poster describing the Residential Facilities Ombudsman Program and  
40 providing contact information. The Department of Human Services shall facilitate the dis-  
41 tribution of information regarding the Residential Facilities Ombudsman Program to resi-  
42 dents, providers and the public.

43 (2) The administrator of each residential facility shall post the written notice and poster  
44 required by this section in conspicuous places in the facility in accordance with procedures  
45 provided by the ombudsman and shall give the written notice to each resident and legal

1 representative, if any, at least annually during the care planning process.

2 **SECTION 8.** The Residential Facilities Ombudsman shall establish procedures to maintain  
3 the confidentiality of the records and files of residents. The procedures must meet the fol-  
4 lowing requirements:

5 (1) The ombudsman or a designee may not disclose, except to state agencies or law  
6 enforcement, the identity of any resident or individual acting on behalf of a resident without  
7 the consent of the resident or the legal representative of the resident.

8 (2) The identity of any resident or individual providing information on behalf of the resi-  
9 dent shall be confidential. If a complaint becomes the subject of judicial proceedings, the in-  
10 vestigative information held by the ombudsman or the designee shall be disclosed for the  
11 purpose of the proceedings if requested by the court.

12 **SECTION 9.** The Residential Facilities Ombudsman appointed under section 2 of this 2017  
13 Act may solicit and accept, gifts, grants and donations from public and private sources for  
14 the purpose of carrying out sections 1 to 8 of this 2017 Act and the moneys shall be deposited  
15 in the Long Term Care Ombudsman Account established under ORS 441.419.

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

18  
19 **SECTION 10.** ORS 441.402 is amended to read:

20 441.402. As used in ORS 441.402 to 441.419:

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

24 [(1)] (2) **“Designee”** means an individual appointed by the Long Term Care Ombudsman **under**  
25 **ORS 441.413** to serve as a representative **in a local community** in order to carry out the purpose  
26 of ORS 441.402 to 441.419.

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

28 [(a) *Long term care facility;*]

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

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

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

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

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

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

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

37 (a) **Any licensed skilled nursing facility or intermediate care facility, as defined in rules**  
38 **adopted under ORS 442.015;**

39 (b) **Adult foster homes, as defined in ORS 443.705, with residents over 60 years of age;**

40 (c) **Residential care facilities, as defined in ORS 443.400; and**

41 (d) **Continuing care retirement communities, as defined in ORS 101.020.**

42 (4) **“Long Term Care Ombudsman Program”** means the services provided by the Long  
43 **Term Care Ombudsman.**

44 **SECTION 11.** ORS 441.403 is amended to read:

45 441.403. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care

1 Ombudsman shall function separately and independently from any other state agency. The Governor  
2 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees  
3 nominated by the [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public**  
4 **Guardianship Advisory Board** established under ORS 441.416. The appointment of the Long Term  
5 Care Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565. A vacancy shall  
6 be filled within 60 days in the same manner as an appointment is made.

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

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

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

19 **SECTION 12.** ORS 441.406 is amended to read:

20 441.406. (1) The [*office of the*] Long Term Care Ombudsman shall carry out the following duties:

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

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

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

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

32 (e) Work closely with cooperative associations and citizen groups in this state and the state  
33 protection and advocacy system under ORS 192.517.

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

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

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

43 [*(B) Contract with qualified individuals and entities to provide programs, services and assistance*  
44 *to persons receiving public guardian and conservator services under ORS 125.675 to 125.687 who are*  
45 *located in areas of this state where such programs, services and other assistance are inadequate or*

1 *nonexistent; and]*

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

6 (i) Appoint designees to serve as local representatives of the office **of the Long Term Care**  
7 **Ombudsman** in various districts of the state and regularly monitor their functions.

8 (j) Specify qualifications and duties of designees.

9 (k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the  
10 [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public Guardianship**  
11 **Advisory Board**.

12 (L) Provide periodically, or at least annually, a report to the Governor, authority, department  
13 and Legislative Assembly.

14 (m) Prepare necessary reports with the assistance of the authority and the department.

15 (n) Supervise, monitor, advise and support the Oregon Public Guardian and Conservator ap-  
16 pointed under ORS 125.678 **and the Residential Facilities Ombudsman appointed under section**  
17 **2 of this 2017 Act**.

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

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

25 **SECTION 12a. If Senate Bill 57 becomes law, section 10, chapter \_\_, Oregon Laws 2017**  
26 **(Enrolled Senate Bill 57) (amending ORS 441.406), is repealed and ORS 441.406, as amended**  
27 **by section 12 of this 2017 Act, is amended to read:**

28 441.406. (1) The Long Term Care Ombudsman shall carry out the following duties:

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

33 (b) Undertake, participate in or cooperate with persons and agencies in such conferences, in-  
34 quiries, meetings or studies as may lead to improvements in the functioning of long term care fa-  
35 cilities.

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

38 (d) Provide information to public agencies about the problems of residents of long term care  
39 facilities.

40 (e) Work closely with cooperative associations and citizen groups in this state and the state  
41 protection and advocacy system under ORS 192.517.

42 (f) Widely publicize the Long Term Care Ombudsman's services, purpose and mode of operation.

43 (g) Collaborate with the Oregon Health Authority, the Department of Human Services, the  
44 Nursing Home Administrators Board and any other appropriate agencies and organizations to es-  
45 tablish a statewide system to collect and analyze information on complaints and conditions in long



1 term care facilities for the purpose of publicizing improvements and resolving significant problems.

2 (h) Contract with the state protection and advocacy system described in ORS 192.517 (1) to  
3 provide services and assistance to persons who are prospective or current residents of a mental  
4 health treatment facility or of a residential facility for individuals with developmental disabilities  
5 when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

6 (i) Appoint designees to serve as local representatives of the office of the Long Term Care  
7 Ombudsman in various districts of the state and regularly monitor their functions.

8 (j) Specify qualifications and duties of designees.

9 (k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the  
10 Residential Ombudsman and Public Guardianship Advisory Board.

11 (L) Provide periodically, or at least annually, a report to the Governor, authority, department  
12 and Legislative Assembly.

13 (m) Prepare necessary reports with the assistance of the authority and the department.

14 (n) [*Supervise, monitor,*] Advise and support the Oregon Public Guardian and Conservator ap-  
15 pointed under ORS 125.678 [*and*].

16 (o) **Supervise, monitor, advise and support** the Residential Facilities Ombudsman appointed  
17 under section 2 of this 2017 Act.

18 (2) At least quarterly, the Department of Human Services shall provide the Long Term Care  
19 Ombudsman with a list of the number of licensed or certified beds in each long term care facility  
20 for which the ombudsman has responsibilities under this section.

21 **SECTION 12b. The amendments to ORS 441.406 by section 12a of this 2017 Act become**  
22 **operative on January 1, 2018.**

23 **SECTION 13.** ORS 441.407 is amended to read:

24 441.407. The Long Term Care Ombudsman shall establish procedures to maintain the  
25 confidentiality of the records and files of residents of [*residential*] **long term care** facilities. These  
26 procedures must meet the following requirements:

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

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

35 **SECTION 14.** ORS 441.408 is amended to read:

36 441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry  
37 into [*residential*] **long term care** facilities at any time considered necessary and reasonable by the  
38 ombudsman or the designee for the purpose of:

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

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

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

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

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

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

45 (2)(a) The [*Long Term Care*] ombudsman shall have access to any resident's records, and to re-

1 cords of any public agency necessary to the duties of the ombudsman, including records on [*patient*  
2 *abuse complaints*] **reports of resident abuse** made pursuant to ORS [*430.735 to 430.765*], **124.050 to**  
3 **124.095**, 441.630 to 441.680 and 441.995. The provisions of ORS 192.553 to 192.581 are not intended  
4 to limit the access of the [*Long Term Care*] ombudsman to medical records of residents of  
5 [*residential*] **long term care** facilities. **If necessary to investigate a complaint**, designees [*may*]  
6 **shall** have access to individual resident's records, including medical records as authorized by the  
7 resident or **the** resident's legal representative[, *if needed to investigate a complaint*].

8 **(b) If a resident's legal representative denies access to the resident's records by the**  
9 **ombudsman or a designee, the ombudsman shall have access to the records if the ombuds-**  
10 **man has reasonable cause to believe that the legal representative is not acting in the best**  
11 **interests of the resident.**

12 **(3) The ombudsman shall enter into confidentiality agreements with the Department of**  
13 **Human Services and with the Oregon Health Authority permitting the ombudsman to have**  
14 **access to electronic records of the department and the authority that are necessary to carry**  
15 **out the duties of the ombudsman. The agreement must ensure that records obtained by the**  
16 **ombudsman from the department or the authority that are confidential, privileged or other-**  
17 **wise protected from disclosure are not further disclosed, except as permitted by state and**  
18 **federal law.**

19 [(3)] **(4)** Entry and investigation authorized by this section shall be done in a manner that does  
20 not disrupt significantly the providing of nursing, residential or other personal care or treatment to  
21 residents.

22 [(4)] **(5)** The ombudsman or the designee must show identification to the person in charge of the  
23 facility. The resident shall have the right to refuse to communicate with the ombudsman or the  
24 designee. The refusal shall be made directly to the ombudsman or the designee and not through an  
25 intermediary.

26 [(5)] **(6)** The resident shall have the right to participate in planning any course of action to be  
27 taken on behalf of the resident by the ombudsman or the designee.

28 **SECTION 15.** ORS 441.409 is amended to read:

29 441.409. (1) Following an investigation, the Long Term Care Ombudsman or the designee shall  
30 report opinions or recommendations to the party or parties affected and, if appropriate, shall at-  
31 tempt to resolve the complaint using informal techniques of mediation, conciliation and persuasion.  
32 Complaints of conditions adversely affecting residents of [*residential*] **long term care** facilities, or  
33 complaints of conditions threatening the safety or well-being of residents that cannot be resolved in  
34 the manner described in this section, shall be referred to an appropriate state agency.

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

38 **SECTION 16.** ORS 441.411 is amended to read:

39 441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*residential*]  
40 **long term care** facility in this state a written notice describing the procedures to follow in making  
41 a complaint, including the address and telephone number of the ombudsman and local designee, if  
42 any, and a poster describing the Long Term Care Ombudsman Program and providing contact in-  
43 formation.

44 (2) The administrator of each [*residential*] **long term care** facility shall post the written notice  
45 and poster required by this section in conspicuous places in the facility in accordance with proce-

1 dures provided by the ombudsman and shall give the written notice to each resident and legally  
2 appointed guardian, if any.

3 **SECTION 17.** ORS 441.412 is amended to read:

4 441.412. (1) Any employee or agent of a [*residential*] **long term care** facility acting in good faith  
5 in discussing resident care pursuant to ORS 441.408 shall have immunity from any civil liability that  
6 might otherwise be incurred or imposed with respect to the making of such report.

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

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

14 **SECTION 18.** ORS 441.413 is amended to read:

15 441.413. (1) The [*appointments of designees shall be made in consultation with a local screening*  
16 *committee*] **Long Term Care Ombudsman shall appoint designees in consultation with local**  
17 **screening committees** that may consist of but not be limited to persons representing:

18 (a) The area agency [*on aging*], **as defined in ORS 410.040.**

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

20 (c) The local health department.

21 (d) Senior citizens groups in the area.

22 [*(e) Residential facilities in the area.*]

23 [*(f)*] (e) Local elected officials.

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

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

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

27 (2) To be appointed as a designee, a person must complete [*six days of*] **an** initial training, **as**  
28 **prescribed by the Long Term Care Ombudsman by rule**, and attend quarterly training sessions  
29 that are approved by the [*Long Term Care*] ombudsman and that shall be coordinated and funded  
30 by the Department of Human Services and the Oregon Health Authority, subject to the availability  
31 of funds. Local screening committees shall be appointed by and serve at the pleasure of the om-  
32 budsman.

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

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

41 (5) Applicants who have experience in either social service, mental health, developmental disa-  
42 bility services, gerontology, nursing or paralegal work shall be given preference in the appointment  
43 of designees.

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

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

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

5 (c) Serve as an educational resource;

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

8 (e) Ensure equitable resolution of problems.

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

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

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

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

13 (C) Visit individual residents and resident councils.

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

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

16 (d) Keep residents and staff informed of the Long Term Care Ombudsman Program.

17 (e) Periodically review the [*patients' bill of*] rights prescribed in ORS 441.605, 441.610 and  
18 441.612, **and any other applicable rights to services**, with residents, families, guardians, adminis-  
19 trators and staff of [*residential facilities*] **long term care facilities**.

20 (f) Perform other related duties as specified.

21 **SECTION 19.** ORS 441.414 is amended to read:

22 441.414. Nothing in ORS 441.402 to 441.419 shall affect the right of residents of a [*residential*]  
23 **long term care** facility to see visitors of their choice.

24 **SECTION 20.** ORS 441.416 is amended to read:

25 441.416. (1) There is established a [*Residential Facilities Advisory Committee*] **Residential Om-**  
26 **budsman and Public Guardianship Advisory Board** of 11 members to be appointed in the follow-  
27 ing manner:

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

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

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

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

32 (e) One person appointed by the Governor from each list of four names submitted by organiza-  
33 tions for seniors, organizations for persons with mental illness and the Oregon Council on Develop-  
34 mental Disabilities; and

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

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

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

43 (4) The members of the [*committee*] **board** must be residents of this state who are broadly rep-  
44 resentative, to the extent possible, of persons residing in residential facilities **as defined in section**  
45 **1 of this 2017 Act or long term care facilities**, including members of racial and ethnic minorities,

1 who have knowledge and interest in the problems of persons residing in residential facilities, and  
2 who are representative of all areas of this state and the demographics of groups served by the Long  
3 Term Care Ombudsman.

4 (5) A member of the [committee] **board** may not have a financial or fiduciary interest in resi-  
5 dential facilities **as defined in section 1 of this 2017 Act, long term care facilities** or service  
6 providers, or involvement in the licensing or certification of residential facilities, **long term care**  
7 **facilities** or service providers.

8 (6) The [committee] **board** 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 the func-  
10 tions of such offices as the [committee] **board** determines.

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

13 (8) The [committee] **board** shall meet at least once each month at a place, day and hour deter-  
14 mined by the [committee] **board**. The [committee] **board** also shall meet at other times and places  
15 specified by the call of the chairperson or of a majority of the members of the [committee] **board**.  
16 The [committee] **board** shall confer each month with the Long Term Care Ombudsman. All meetings  
17 are subject to ORS 192.610 to 192.690.

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

20 **SECTION 21.** ORS 441.417 is amended to read:

21 441.417. The [Residential Facilities Advisory Committee] **Residential Ombudsman and Public**  
22 **Guardianship Advisory Board** shall:

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

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

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

28 **SECTION 22.** ORS 441.418 is amended to read:

29 441.418. (1) A residential facility **as defined in section 1 of this 2017 Act or a long term care**  
30 **facility** that files a complaint against a designee appointed under ORS 441.413 and objects to the  
31 action of the Long Term Care Ombudsman in resolving the complaint may appeal the ombudsman's  
32 action to a panel of the [Residential Facilities Advisory Committee] **Residential Ombudsman and**  
33 **Public Guardianship Advisory Board**.

34 (2) The [committee] **board** on its own motion may review any action by the ombudsman  
35 appealable under this section. The review shall provide an opportunity for written and oral presen-  
36 tation by the residential facility **as defined in section 1 of this 2017 Act or a long term care**  
37 **facility** and the ombudsman. The [committee] **board** shall issue its findings and any instructions to  
38 the ombudsman in written form consistent with the federal Older Americans Act or other applicable  
39 federal law.

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

44 **SECTION 23.** ORS 441.419 is amended to read:

45 441.419. The Long Term Care Ombudsman Account is established in the State Treasury, separate

1 and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants  
 2 received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombuds-  
 3 man Account and are continuously appropriated to the Long Term Care Ombudsman for carrying  
 4 out the responsibilities **of the office** of the Long Term Care Ombudsman and the Oregon Public  
 5 Guardian and Conservator.

6 **SECTION 24. ORS 441.418 is added to and made a part of ORS 441.402 to 441.419.**

7 **SECTION 25.** ORS 125.678 is amended to read:

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

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

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

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

26 (b) Prescribe the duties and assignments of persons hired or under contract with the Oregon  
 27 Public Guardian and Conservator;

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

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

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

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

44 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-  
 45 nations from public and private sources for the purpose of carrying out the provisions of ORS

1 125.675 to 125.687, which moneys shall be deposited in the Long Term Care Ombudsman Account  
2 established under ORS 441.419.

3  
4 **CONFORMING AMENDMENTS**

5  
6 **SECTION 26.** ORS 410.550 is amended to read:

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

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

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

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

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

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

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

22 (g) Two consumers of residential **or long term care** facilities, as defined in ORS 441.402 **and**  
23 **442.015**, or community-based care facilities or family members of such residents, to be appointed by  
24 the Speaker of the House of Representatives;

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

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

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

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

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

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

37 (4) The council shall:

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

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

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

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

1        **SECTION 27.** ORS 443.738 is amended to read:

2        443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers  
3 and substitute caregivers for adult foster homes shall satisfactorily meet all educational require-  
4 ments established by the licensing agency. After consultation with representatives of providers,  
5 educators, residents' advocates and the Long Term Care Ombudsman **or the Residential Facilities**  
6 **Ombudsman**, the licensing agency shall adopt by rule standards governing the educational re-  
7 quirements. The rules shall require that a person may not provide care to any resident prior to ac-  
8 quiring education or supervised training designed to impart the basic knowledge and skills necessary  
9 to maintain the health, safety and welfare of the resident. Each provider shall document compliance  
10 with the educational requirements for persons subject to the requirements.

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

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

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

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

23        (3) After consultation with representatives of providers, educators, residents' advocates and the  
24 Long Term Care Ombudsman **or the Residential Facilities Ombudsman**, the licensing agency may  
25 adopt by rule exceptions to the training requirements of subsections (1) and (2) of this section for  
26 persons who are appropriately licensed medical care professionals in Oregon or who possess suffi-  
27 cient education, training or experience to warrant an exception. The licensing agency may not make  
28 any exceptions to the testing requirements.

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

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

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

42        (7) Providers shall give at least 30 days' written notice to the residents, and to the legal repre-  
43 sentative, guardian or conservator of any resident, before selling, leasing or transferring the adult  
44 foster home business or the real property on which the adult foster home is located. Providers shall  
45 inform real estate licensees, prospective buyers, lessees and transferees in all written communi-



1 cations that the license to operate an adult foster home is not transferable and shall refer them to  
2 the licensing agency for information about licensing.

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

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

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

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

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

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

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

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

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

44 (13) Any lessor of a building in which an adult foster home is located may not interfere with the  
45 admission, discharge or transfer of any resident in the adult foster home unless the lessor is a pro-

1 vider or coprovider on the license.

2 **SECTION 28.** ORS 443.767 is amended to read:

3 443.767. (1) When the licensing agency receives a complaint that alleges that a resident of a li-  
4 censed adult foster home has been injured, abused or neglected, and that the resident's health or  
5 safety is in imminent danger, or that the resident has died or been hospitalized, the investigation  
6 shall begin immediately after the complaint is received. If the investigator determines that the  
7 complaint is substantiated, the licensing agency shall take appropriate corrective action imme-  
8 diately.

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

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

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

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

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

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

28 (C) The facility; and

29 (D) The **Office of the** Long Term Care Ombudsman.

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

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

38 **(b) As used in this subsection, "area agency" has the meaning given that term in ORS**  
39 **410.040.**

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

42 **SECTION 29.** ORS 476.030 is amended to read:

43 476.030. (1) The State Fire Marshal shall enforce all statutes, and make rules relating to:

44 (a) The prevention of fires.

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

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

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

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

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

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

33 (5) The State Fire Marshal shall provide training in fire safety inspection to the Department of  
34 Human Services, area agencies, the Oregon Health Authority, community mental health programs,  
35 developmental disabilities programs and designees of the Long Term Care Ombudsman **and the**  
36 **Residential Facilities Ombudsman**. If an adult foster home has been inspected by the Department  
37 of Human Services, the Oregon Health Authority, an area agency, a community mental health pro-  
38 gram or a developmental disabilities program and the agency conducting the inspection reasonably  
39 believes that the adult foster home is not in compliance with applicable fire safety rules, the agency  
40 conducting the inspection may request the State Fire Marshal to inspect or cause an inspection to  
41 be made. If a designee of the Long Term Care Ombudsman **or the Residential Facilities Om-**  
42 **budsman**, in the course of visiting an adult foster home, believes that the adult foster home is not  
43 in compliance with applicable fire safety rules, the designee shall report the problem to the appro-  
44 priate agency to request a fire safety inspection by the office of the State Fire Marshal or by a  
45 designated representative of the office of the State Fire Marshal.

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

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

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

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

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

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

11  
12 **CAPTIONS**

13  
14 **SECTION 30. The unit captions used in this 2017 Act are provided only for the conven-**  
15 **ience of the reader and do not become part of the statutory law of this state or express any**  
16 **legislative intent in the enactment of this 2017 Act.**

17  
18 **EMERGENCY CLAUSE**

19  
20 **SECTION 31. This 2017 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
22 **on its passage.**

23 \_\_\_\_\_