

SENATE AMENDMENTS TO SENATE BILL 58

By COMMITTEE ON HUMAN SERVICES

April 24

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest of the line and delete
2 line 3 and insert “creating new provisions; amending ORS 125.678, 410.550, 441.402, 441.403, 441.406,
3 441.407, 441.408, 441.409, 441.411, 441.412, 441.413, 441.414, 441.416, 441.417, 441.418, 441.419, 443.738,
4 443.767 and 476.030; and declaring an emergency.”.

5 Delete lines 5 through 30 and delete pages 2 through 7 and insert:
6

“RESIDENTIAL FACILITIES OMBUDSMAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(7) ‘Residential Facilities Ombudsman Program’ means the services provided by the
31 Residential Facilities Ombudsman.

32 “SECTION 2. (1) The Long Term Care Ombudsman, in consultation with the Residential
33 Ombudsman and Public Guardianship Advisory Board established under ORS 441.416, shall
34 appoint a Residential Facilities Ombudsman for a four-year term. The Residential Facilities
35 Ombudsman serves at the pleasure of the Long Term Care Ombudsman and may be removed

1 by the Long Term Care Ombudsman for cause. The salary of the Residential Facilities Om-
2 budsman shall be determined by the Long Term Care Ombudsman. The Residential Facilities
3 Ombudsman shall be reimbursed for all reasonable travel and other expenses incurred in the
4 performance of the ombudsman's official duties.

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

8 “(3) The Residential Facilities Ombudsman shall:

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

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

14 “(c) Widely publicize the Residential Facilities Ombudsman's services, purpose and mode
15 of operation.

16 “(d) Undertake, participate in or cooperate with persons and agencies in conferences,
17 inquiries, meetings or studies that may lead to improvements in the functioning of residen-
18 tial facilities.

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

21 “(f) Provide services to residents to assist them in protecting their health, safety, welfare
22 and rights.

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

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

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

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

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

37 “(L) Train designees.

38 “(m) Promote the development of organizations to advocate on behalf of residents of
39 residential facilities.

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

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

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

1 “(q) Make recommendations for improvements in the functioning of the residential fa-
2 cility system in this state.

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

7 “(s) Work with residents to identify and recommend processes for making complaints
8 about service providers and entities.

9 “(t) Provide information to public agencies about the problems of residents.

10 “(u) Collect and compile data necessary to prepare the report submitted to the Governor
11 under ORS 182.500.

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

15 “SECTION 3. (1) The Oregon Health Authority and the Department of Human Services
16 shall provide to the Residential Facilities Ombudsman and the designees monthly, in a format
17 specified by the ombudsman, updated demographic and licensing information regarding each
18 residential facility for which the Residential Facilities Ombudsman has responsibilities under
19 this section.

20 “(2) All state agencies, their representatives and service providers shall cooperate with
21 and assist the Residential Facilities Ombudsman and designees in the performance of the
22 ombudsman’s duties and functions.

23 “SECTION 4. (1) The Residential Facilities Ombudsman shall, in consultation with the
24 Long Term Care Ombudsman, appoint designees to serve as representatives of the ombuds-
25 man in local communities. The ombudsman shall regularly monitor the functions of
26 designees.

27 “(2) The Residential Facilities Ombudsman shall prescribe the qualifications of designees
28 by rule.

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

32 “(4) Designees must sign a contract with the Residential Facilities Ombudsman that
33 outlines the scope of their duties. Violation of the contract is cause for terminating the
34 appointment of a designee.

35 “SECTION 5. (1) The Residential Facilities Ombudsman and each designee shall:

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

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

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

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

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

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

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

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

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

5 “(B) For a resident who is unable to communicate consent and the resident’s legal rep-
6 resentative denies consent, access to the resident’s records without consent if the ombuds-
7 man has reasonable cause to believe that the legal representative is not acting in the
8 resident’s best interests.

9 “(C) Records of any public agency, including abuse reports maintained under ORS 430.757.

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

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

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

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

18 “(2) The Residential Facilities Ombudsman shall enter into confidentiality agreements
19 with the department and with the authority permitting the ombudsman and each designee
20 to have access to electronic records of the department and the authority that are necessary
21 to carry out the duties of the ombudsman. The agreement must ensure that records obtained
22 by the ombudsman from the department or the authority that are confidential, privileged or
23 otherwise protected from disclosure are not further disclosed, except as permitted by state
24 and federal law.

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

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

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

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

34 “(b) The resident has a legal representative who refuses to provide consent to the in-
35 vestigation, the ombudsman may proceed without consent if the ombudsman has reasonable
36 cause to believe that it is in the resident’s best interests.

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

40 “(3) Following an investigation of a complaint, the Residential Facilities Ombudsman or
41 a designee shall report the ombudsman’s findings and conclusions to the resident who made
42 the complaint and to a complainant acting on behalf of a resident. If the ombudsman or
43 designee finds conditions threatening the health, safety or welfare of a resident that cannot
44 be resolved informally, the ombudsman or designee shall refer the findings to the Depart-
45 ment of Human Services, the Oregon Health Authority or law enforcement officials.

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

3 “(5) A resident or an individual who makes a complaint to the Residential Facilities
4 Ombudsman under this section, or who participates in an investigation of a complaint, may
5 not be subjected to a penalty, sanction or restriction or be denied any right, privilege or
6 benefit on account of making the complaint or participating in the investigation of the
7 complaint.

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

13 “(7) In order to encourage residents and individuals acting on behalf of residents to
14 communicate with the Residential Facilities Ombudsman or designee, any resident or indi-
15 vidual acting on behalf of a resident who makes a complaint to the Residential Facilities
16 Ombudsman in good faith under this section or who participates in an investigation of a
17 complaint shall have immunity from any civil or criminal liability that might otherwise be
18 incurred or imposed with respect to the communication.

19 “SECTION 7. (1) The Residential Facilities Ombudsman shall prepare and distribute to
20 each residential facility in this state a written notice describing the procedures to follow in
21 making a complaint, including the address and telephone number of the ombudsman and
22 designee, if any, and a poster describing the Residential Facilities Ombudsman Program and
23 providing contact information. The Department of Human Services shall facilitate the dis-
24 tribution of information regarding the Residential Facilities Ombudsman Program to resi-
25 dents, providers and the public.

26 “(2) The administrator of each residential facility shall post the written notice and poster
27 required by this section in conspicuous places in the facility in accordance with procedures
28 provided by the ombudsman and shall give the written notice to each resident and legal
29 representative, if any, at least annually during the care planning process.

30 “SECTION 8. The Residential Facilities Ombudsman shall establish procedures to main-
31 tain the confidentiality of the records and files of residents. The procedures must meet the
32 following requirements:

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

36 “(2) The identity of any resident or individual providing information on behalf of the
37 resident shall be confidential. If a complaint becomes the subject of judicial proceedings, the
38 investigative information held by the ombudsman or the designee shall be disclosed for the
39 purpose of the proceedings if requested by the court.

40 “SECTION 9. The Residential Facilities Ombudsman appointed under section 2 of this
41 2017 Act may solicit and accept, gifts, grants and donations from public and private sources
42 for the purpose of carrying out sections 1 to 8 of this 2017 Act and the moneys shall be de-
43 posited in the Long Term Care Ombudsman Account established under ORS 441.419.

1 “**SECTION 10.** ORS 441.402 is amended to read:

2 “441.402. As used in ORS 441.402 to 441.419:

3 “(1) ‘**Administrative action**’ means any action, inaction or decision made by an owner,
4 **employee or agent of a long term care facility or by a public agency that affects the services**
5 **to residents of long term care facilities.**

6 “[(1)] (2) ‘Designee’ means an individual appointed by the Long Term Care Ombudsman **under**
7 **ORS 441.413** to serve as a representative **in a local community** in order to carry out the purpose
8 of ORS 441.402 to 441.419.

9 “[(2) ‘Residential facility’ includes a:]

10 “[(a) Long term care facility;]

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

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

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

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

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

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

18 “(3) ‘**Long term care facility**’ means:

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

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

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

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

24 “(4) ‘**Long Term Care Ombudsman Program**’ means the services provided by the **Long**
25 **Term Care Ombudsman.**

26 “**SECTION 11.** ORS 441.403 is amended to read:

27 “441.403. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care
28 Ombudsman shall function separately and independently from any other state agency. The Governor
29 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees
30 nominated by the [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public**
31 **Guardianship Advisory Board** established under ORS 441.416. The appointment of the Long Term
32 Care Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565. A vacancy shall
33 be filled within 60 days in the same manner as an appointment is made.

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

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

39 “(a) The fields of aging, mental health or developmental disabilities;

40 “(b) Physical or behavioral health care;

41 “(c) Working with community programs;

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

43 “(e) Working with health care providers;

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

45 “(g) Administrative and managerial experience.

1 “**SECTION 12.** ORS 441.406 is amended to read:

2 “441.406. (1) The [*office of the*] Long Term Care Ombudsman shall carry out the following duties:

3 “(a) Investigate and resolve complaints made by or for residents of [*residential*] **long term care**

4 facilities about administrative actions that may adversely affect their health, safety, welfare or

5 rights, including subpoenaing any person to appear, **to** give sworn testimony or to produce docu-

6 mentary or other evidence that is reasonably material to any matter under investigation.

7 “(b) Undertake, participate in or cooperate with persons and agencies in such conferences, in-

8 quiries, meetings or studies as may lead to improvements in the functioning of [*residential*] **long**

9 **term care** facilities.

10 “(c) Monitor the development and implementation of federal, state and local laws, regulations

11 and policies that relate to [*residential*] **long term care** facilities in this state.

12 “(d) Provide information to public agencies about the problems of residents of [*residential*] **long**

13 **term care** facilities.

14 “(e) Work closely with cooperative associations and citizen groups in this state and the state

15 protection and advocacy system under ORS 192.517.

16 “(f) Widely publicize the Long Term Care Ombudsman’s [*service*] **services**, purpose and mode of

17 operation.

18 “(g) Collaborate with the Oregon Health Authority, the Department of Human Services, the

19 Nursing Home Administrators Board and any other appropriate agencies and organizations to es-

20 tablish a statewide system to collect and analyze information on complaints and conditions in [*resi-*

21 *dential*] **long term care** facilities for the purpose of publicizing improvements and resolving

22 significant problems.

23 “[(*h*)(A) *Identify and coordinate programs, services and other assistance for persons receiving*

24 *public guardian and conservator services under ORS 125.675 to 125.687, that are available*

25 *statewide;*]

26 “[(*B*) *Contract with qualified individuals and entities to provide programs, services and assistance*

27 *to persons receiving public guardian and conservator services under ORS 125.675 to 125.687 who are*

28 *located in areas of this state where such programs, services and other assistance are inadequate or*

29 *nonexistent; and]*

30 “[(*C*)] (**h**) Contract with the state protection and advocacy system described in ORS 192.517 (1)

31 to provide services and assistance to persons who are prospective or current residents of a mental

32 health treatment facility or of a residential facility for individuals with developmental disabilities

33 when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

34 “(i) Appoint designees to serve as local representatives of the office **of the Long Term Care**

35 **Ombudsman** in various districts of the state and regularly monitor their functions.

36 “(j) Specify qualifications and duties of designees.

37 “(k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the

38 [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public Guardianship**

39 **Advisory Board.**

40 “(L) Provide periodically, or at least annually, a report to the Governor, authority, department

41 and 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 **and the Residential Facilities Ombudsman appointed under section**

45 **2 of this 2017 Act.**

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

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

8 “**SECTION 13.** ORS 441.407 is amended to read:

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

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

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

20 “**SECTION 14.** ORS 441.408 is amended to read:

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

- 24 “(a) Investigating and resolving complaints made by residents or made on their behalf;
25 “(b) Interviewing residents, with their consent, in private;
26 “(c) Offering the services of the ombudsman or the designee to any resident, in private;
27 “(d) Interviewing employees or agents of the facility;
28 “(e) Consulting regularly with the facility administration; and
29 “(f) Providing services authorized by law or by rule.

30 “(2)(a) The [*Long Term Care*] ombudsman shall have access to any resident’s records, and to
31 records of any public agency necessary to the duties of the ombudsman, including records on [*patient*
32 *abuse complaints*] **reports of resident abuse** made pursuant to ORS [*430.735 to 430.765,*] **124.050 to**
33 **124.095**, 441.630 to 441.680 and 441.995. The provisions of ORS 192.553 to 192.581 are not intended
34 to limit the access of the [*Long Term Care*] ombudsman to medical records of residents of
35 [*residential*] **long term care** facilities. **If necessary to investigate a complaint**, designees [*may*]
36 **shall** have access to individual resident’s records, including medical records as authorized by the
37 resident or **the** resident’s legal representative[, *if needed to investigate a complaint*].

38 “(b) **If a resident’s legal representative denies access to the resident’s records by the**
39 **ombudsman or a designee, the ombudsman shall have access to the records if the ombuds-**
40 **man has reasonable cause to believe that the legal representative is not acting in the best**
41 **interests of the resident.**

42 “(3) **The ombudsman shall enter into confidentiality agreements with the Department of**
43 **Human Services and with the Oregon Health Authority permitting the ombudsman and each**
44 **designee to have access to electronic records of the department and the authority that are**
45 **necessary to carry out the duties of the ombudsman. The agreement must ensure that re-**

1 **cords obtained by the ombudsman from the department or the authority that are confiden-**
2 **tial, privileged or otherwise protected from disclosure are not further disclosed, except as**
3 **permitted by state and federal law.**

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

7 “[4] (5) The ombudsman or the designee must show identification to the person in charge of
8 the facility. The resident shall have the right to refuse to communicate with the ombudsman or the
9 designee. The refusal shall be made directly to the ombudsman or the designee and not through an
10 intermediary.

11 “[5] (6) The resident shall have the right to participate in planning any course of action to be
12 taken on behalf of the resident by the ombudsman or the designee.

13 **“SECTION 15.** ORS 441.409 is amended to read:

14 “441.409. (1) Following an investigation, the Long Term Care Ombudsman or the designee shall
15 report opinions or recommendations to the party or parties affected and, if appropriate, shall at-
16 tempt to resolve the complaint using informal techniques of mediation, conciliation and persuasion.
17 Complaints of conditions adversely affecting residents of [*residential*] **long term care** facilities, or
18 complaints of conditions threatening the safety or well-being of residents that cannot be resolved in
19 the manner described in this section, shall be referred to an appropriate state agency.

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

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

24 “441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*residential*]
25 **long term care** facility in this state a written notice describing the procedures to follow in making
26 a complaint, including the address and telephone number of the ombudsman and local designee, if
27 any, and a poster describing the Long Term Care Ombudsman Program and providing contact in-
28 formation.

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

33 **“SECTION 17.** ORS 441.412 is amended to read:

34 “441.412. (1) Any employee or agent of a [*residential*] **long term care** facility acting in good
35 faith in discussing resident care pursuant to ORS 441.408 shall have immunity from any civil liability
36 that might otherwise be incurred or imposed with respect to the making of such report.

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

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

44 **“SECTION 18.** ORS 441.413 is amended to read:

45 “441.413. (1) The [*appointments of designees shall be made in consultation with a local screening*

1 *committee*] **Long Term Care Ombudsman shall appoint designees in consultation with local**
2 **screening committees** that may consist of but not be limited to persons representing:

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

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

5 “(c) The local health department.

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

7 “[*e Residential facilities in the area.*]

8 “[*f*] **(e)** Local elected officials.

9 “[*g The community mental health program director or local mental health authority.*]

10 “[*h The community developmental disabilities program director.*]

11 “[*i Representatives from the Oregon Health Authority.*]

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

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

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

26 “(5) Applicants who have experience in either social service, mental health, developmental dis-
27 ability services, gerontology, nursing or paralegal work shall be given preference in the appointment
28 of designees.

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

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

33 “(b) Assist residents with participating more actively in determining the delivery of services at
34 the facilities;

35 “(c) Serve as an educational resource;

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

38 “(e) Ensure equitable resolution of problems.

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

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

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

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

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

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

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

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

2 “(e) Periodically review the [*patients’ bill of*] rights prescribed in ORS 441.605, 441.610 and
3 441.612, **and any other applicable rights to services**, with residents, families, guardians, adminis-
4 trators and staff of [*residential facilities*] **long term care facilities**.

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

6 “**SECTION 19.** ORS 441.414 is amended to read:

7 “441.414. Nothing in ORS 441.402 to 441.419 shall affect the right of residents of a [*residential*]
8 **long term care** facility to see visitors of their choice.

9 “**SECTION 20.** ORS 441.416 is amended to read:

10 “441.416. (1) There is established a [*Residential Facilities Advisory Committee*] **Residential Om-**
11 **budsman and Public Guardianship Advisory Board** of 11 members to be appointed in the follow-
12 ing manner:

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

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

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

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

17 “(e) One person appointed by the Governor from each list of four names submitted by organ-
18 izations for seniors, organizations for persons with mental illness and the Oregon Council on De-
19 velopmental Disabilities; and

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

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

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

28 “(4) The members of the [*committee*] **board** must be residents of this state who are broadly rep-
29 resentative, to the extent possible, of persons residing in residential facilities **as defined in section**
30 **1 of this 2017 Act or long term care facilities**, including members of racial and ethnic minorities,
31 who have knowledge and interest in the problems of persons residing in residential facilities, and
32 who are representative of all areas of this state and the demographics of groups served by the Long
33 Term Care Ombudsman.

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

38 “(6) The [*committee*] **board** shall select one of its members as chairperson and another as vice
39 chairperson, for such terms and with duties and powers necessary for the performance of the func-
40 tions of such offices as the [*committee*] **board** determines.

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

43 “(8) The [*committee*] **board** shall meet at least once each month at a place, day and hour deter-
44 mined by the [*committee*] **board**. The [*committee*] **board** also shall meet at other times and places
45 specified by the call of the chairperson or of a majority of the members of the [*committee*] **board**.

1 The [committee] **board** shall confer each month with the Long Term Care Ombudsman. All meetings
2 are subject to ORS 192.610 to 192.690.

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

5 “**SECTION 21.** ORS 441.417 is amended to read:

6 “441.417. The [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public**
7 **Guardianship Advisory Board** shall:

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

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

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

13 “**SECTION 22.** ORS 441.418 is amended to read:

14 “441.418. (1) A residential facility **as defined in section 1 of this 2017 Act or a long term care**
15 **facility** that files a complaint against a designee appointed under ORS 441.413 and objects to the
16 action of the Long Term Care Ombudsman in resolving the complaint may appeal the ombudsman’s
17 action to a panel of the [*Residential Facilities Advisory Committee*] **Residential Ombudsman and**
18 **Public Guardianship Advisory Board.**

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

25 “(3) If the [committee] **board** disagrees with the action of the ombudsman, the [committee] **board**
26 may refer the resolution back to the ombudsman with instructions consistent with the federal Older
27 Americans Act or other applicable federal law to conform the ombudsman’s action in the matter to
28 the recommendations of the [committee] **board.**

29 “**SECTION 23.** ORS 441.419 is amended to read:

30 “441.419. The Long Term Care Ombudsman Account is established in the State Treasury, sepa-
31 rate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other
32 grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care
33 Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for
34 carrying out the responsibilities **of the office** of the Long Term Care Ombudsman and the Oregon
35 Public Guardian and Conservator.

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

37 “**SECTION 25.** ORS 125.678 is amended to read:

38 “125.678. (1) The Long Term Care Ombudsman appointed under ORS 441.403, in consultation
39 with the [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public**
40 **Guardianship Advisory Board**, shall appoint the Oregon Public Guardian and Conservator in the
41 office of the Long Term Care Ombudsman for a four-year term. The Oregon Public Guardian and
42 Conservator serves at the pleasure of the Long Term Care Ombudsman and may be removed by the
43 Long Term Care Ombudsman for good cause. If there is a vacancy for any cause, the Long Term
44 Care Ombudsman shall make an appointment within 60 days. The Oregon Public Guardian and
45 Conservator shall receive a salary as fixed by the Long Term Care Ombudsman and be reimbursed

1 for all reasonable travel and other expenses incurred in the performance of official duties.

2 “(2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the
3 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to ORS
4 125.675 to 125.687, within the office of the Long Term Care Ombudsman, and subject to the direction,
5 supervision and control of the Long Term Care Ombudsman.

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

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

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

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

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

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

21 “(5) The Oregon Public Guardian and Conservator may delegate the exercise or discharge of any
22 power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian and
23 Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or un-
24 der contract with the Oregon Public Guardian and Conservator as appropriate for the purpose of
25 conducting an official act in the name of the Oregon Public Guardian and Conservator. The official
26 act of any person acting in the name of the Oregon Public Guardian and Conservator by the au-
27 thority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public
28 Guardian and Conservator.

29 “(6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-
30 nations from public and private sources for the purpose of carrying out the provisions of ORS
31 125.675 to 125.687, which moneys shall be deposited in the Long Term Care Ombudsman Account
32 established under ORS 441.419.

33
34 **“CONFORMING AMENDMENTS**

35
36 **“SECTION 26.** ORS 410.550 is amended to read:

37 “410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is
38 created, to consist of 12 members. Appointed members shall be residents of the State of Oregon and
39 representative of the geographic locations of all long term care facilities and community-based care
40 facilities in this state. The members shall include:

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

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

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

45 “(d) A representative of the Oregon Association of Area Agencies on Aging and Disabilities, to

1 be appointed by the Governor;

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

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

7 “(g) Two consumers of residential **or long term care** facilities, as defined in ORS 441.402 **and**
8 **section 1 of this 2017 Act**, or community-based care facilities or family members of such residents,
9 to be appointed by the Speaker of the House of Representatives;

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

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

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

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

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

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

23 “(4) The council shall:

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

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

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

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

32 “**SECTION 27.** ORS 443.738 is amended to read:

33 “443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers
34 and substitute caregivers for adult foster homes shall satisfactorily meet all educational require-
35 ments established by the licensing agency. After consultation with representatives of providers,
36 educators, residents’ advocates, [and] the Long Term Care Ombudsman **and the Residential Facil-**
37 **ities Ombudsman**, the licensing agency shall adopt by rule standards governing the educational
38 requirements. The rules shall require that a person may not provide care to any resident prior to
39 acquiring education or supervised training designed to impart the basic knowledge and skills nec-
40 essary to maintain the health, safety and welfare of the resident. Each provider shall document
41 compliance with the educational requirements for persons subject to the requirements.

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

44 “(a) A requirement that, before being licensed, a provider successfully completes training that
45 satisfies a defined curriculum, including demonstrations and practice in physical caregiving,

1 screening for care and service needs, appropriate behavior toward residents with physical, cognitive
2 and mental disabilities and issues related to architectural accessibility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 “**SECTION 28.** ORS 443.767 is amended to read:

34 “443.767. (1) When the licensing agency receives a complaint that alleges that a resident of a
35 licensed adult foster home has been injured, abused or neglected, and that the resident’s health or
36 safety is in imminent danger, or that the resident has died or been hospitalized, the investigation
37 shall begin immediately after the complaint is received. If the investigator determines that the
38 complaint is substantiated, the licensing agency shall take appropriate corrective action imme-
39 diately.

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

45 “(3) After public hearing, the licensing agency shall by rule set standards for the procedure,

1 content and time limits for the initiation and completion of investigations of complaints. The time
2 limits shall be as short as possible and shall vary in accordance with the severity of the circum-
3 stances alleged in the complaint. In no event shall the investigation exceed a duration of 60 days,
4 unless there is an ongoing concurrent criminal investigation, in which case the licensing agency
5 may take a reasonable amount of additional time in which to complete the investigation.

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

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

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

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

14 “(C) The facility; and

15 “(D) The Long Term Care Ombudsman **and the Residential Facilities Ombudsman**.

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

18 “(6)(a) The complaint and the investigation report shall be available to the public at the local
19 office of the licensing agency or the type B area agency [*on aging*], if appropriate. When the li-
20 censing agency or type B area agency [*on aging*] concludes the investigation of a complaint, the li-
21 censing agency or type B area agency [*on aging*] shall clearly designate the outcome of the
22 complaint investigation and make the designation available to the public together with the com-
23 plaint and the investigation report.

24 “(b) **As used in this subsection, ‘area agency’ has the meaning given that term in ORS**
25 **410.040.**

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

28 “**SECTION 29.** ORS 476.030 is amended to read:

29 “476.030. (1) The State Fire Marshal shall enforce all statutes, and make rules relating to:

30 “(a) The prevention of fires.

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

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

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

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

43 “(3) If, in the opinion of the State Fire Marshal, a governmental subdivision of the state has
44 enacted adequate regulations generally conforming to state and national standards concerning fire
45 prevention, fire safety measures and building construction requirements for safety, and if the gov-

1 governmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal
2 may exempt the area subject to such regulation either partially or fully from the statutes, rules and
3 regulations administered by the State Fire Marshal. Prior to adoption of any such exemption, the
4 State Fire Marshal may request from the Department of Public Safety Standards and Training con-
5 sideration of and recommendations regarding the exemption. The exemption may extend for a two-
6 year period, and may be renewed from time to time, but may be canceled by the State Fire Marshal
7 following 30 days' written notice if the State Fire Marshal finds that the governmental subdivision's
8 regulations or enforcement thereof are not reasonably sufficient. The governmental subdivision shall
9 furnish a copy of such regulations to the State Fire Marshal and shall file with the State Fire
10 Marshal any amendment thereto within 30 days before the effective date of such amendment. The
11 State Fire Marshal shall designate a person or division within such governmental subdivision as an
12 approved authority for exercising functions relating to fire prevention, fire safety measures and
13 building construction. Upon request of a local official having enforcement responsibility and a
14 showing of unusual fire hazard or other special circumstances, the State Fire Marshal shall make
15 investigation and appropriate recommendations.

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

19 “(5) The State Fire Marshal shall provide training in fire safety inspection to the Department
20 of Human Services, area agencies, the Oregon Health Authority, community mental health programs,
21 developmental disabilities programs and designees of the Long Term Care Ombudsman **and the**
22 **Residential Facilities Ombudsman**. If an adult foster home has been inspected by the Department
23 of Human Services, the Oregon Health Authority, an area agency, a community mental health pro-
24 gram or a developmental disabilities program and the agency conducting the inspection reasonably
25 believes that the adult foster home is not in compliance with applicable fire safety rules, the agency
26 conducting the inspection may request the State Fire Marshal to inspect or cause an inspection to
27 be made. If a designee of the Long Term Care Ombudsman **or the Residential Facilities Om-**
28 **budsman**, in the course of visiting an adult foster home, believes that the adult foster home is not
29 in compliance with applicable fire safety rules, the designee shall report the problem to the appro-
30 priate agency to request a fire safety inspection by the office of the State Fire Marshal or by a
31 designated representative of the office of the State Fire Marshal.

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

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

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

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

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

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

42
43 “CAPTIONS

44
45 “SECTION 30. The unit captions used in this 2017 Act are provided only for the conven-

1 ience of the reader and do not become part of the statutory law of this state or express any
2 legislative intent in the enactment of this 2017 Act.

3

4

“EMERGENCY CLAUSE

5

6 **“SECTION 31. This 2017 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
8 **on its passage.”.**

9
