

At the request of Long Term Care Ombudsman

**PROPOSED AMENDMENTS TO
SENATE BILL 58**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest
2 of the line and delete line 3 and insert “creating new provisions; amending
3 ORS 125.678, 410.550, 441.402, 441.403, 441.406, 441.407, 441.408, 441.409,
4 441.411, 441.412, 441.413, 441.414, 441.416, 441.417, 441.418, 441.419, 443.738,
5 443.767 and 476.030; and declaring an emergency.”.

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

8 **“RESIDENTIAL FACILITIES OMBUDSMAN**

9
10 **“SECTION 1. As used in sections 1 to 8 of this 2017 Act:**

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

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

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

20 **“(4) ‘Long Term Care Ombudsman’ means the individual appointed**
21 **by the Governor under ORS 441.403.**

1 **“(5) ‘Resident’ means an individual who resides in a residential fa-**
2 **cility.**

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

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

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

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

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

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

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

12 **“(B) Facility licensed by the Oregon Health Authority to provide**
13 **alcohol and drug treatment.**

14 **“(7) ‘Residential Facilities Ombudsman Program’ means the ser-**
15 **vices provided by the Residential Facilities Ombudsman.**

16 **“SECTION 2. (1) The Long Term Care Ombudsman, in consultation**
17 **with the Residential Ombudsman and Public Guardianship Advisory**
18 **Board established under ORS 441.416, shall appoint a Residential Fa-**
19 **ilities Ombudsman for a four-year term. The Residential Facilities**
20 **Ombudsman serves at the pleasure of the Long Term Care Ombuds-**
21 **man and may be removed by the Long Term Care Ombudsman for**
22 **cause. The salary of the Residential Facilities Ombudsman shall be**
23 **determined by the Long Term Care Ombudsman. The Residential Fa-**
24 **ilities Ombudsman shall be reimbursed for all reasonable travel and**
25 **other expenses incurred in the performance of the ombudsman’s offi-**
26 **cial duties.**

27 **“(2) The Residential Facilities Ombudsman may, subject to the ap-**
28 **proval of the Long Term Care Ombudsman, hire or contract with vol-**
29 **unteers, staff, deputy ombudsman and other qualified individuals as**
30 **necessary to perform the duties of the ombudsman.**

- 1 **“(3) The Residential Facilities Ombudsman shall:**
- 2 **“(a) Identify, investigate and resolve complaints made by or on be-**
3 **half of residents about administrative actions.**
- 4 **“(b) Provide residents, families of residents, guardians, community**
5 **members and administrators and staff of residential facilities with in-**
6 **formation regarding the rights of residents as set forth in ORS 427.107**
7 **and 430.210 and any other applicable rights of residents.**
- 8 **“(c) Widely publicize the Residential Facilities Ombudsman’s ser-**
9 **vices, purpose and mode of operation.**
- 10 **“(d) Undertake, participate in or cooperate with persons and agen-**
11 **cies in conferences, inquiries, meetings or studies that may lead to**
12 **improvements in the functioning of residential facilities.**
- 13 **“(e) Work closely with associations and citizen groups in this state**
14 **and the state protection and advocacy system under ORS 192.517.**
- 15 **“(f) Provide services to residents to assist them in protecting their**
16 **health, safety, welfare and rights.**
- 17 **“(g) Ensure that residents have regular, timely, private and unim-**
18 **peded access to the Residential Facilities Ombudsman’s services and**
19 **that a resident and an individual acting on behalf of a resident who**
20 **files a complaint receives a timely response to the complaint from the**
21 **ombudsman or a designee.**
- 22 **“(h) Represent the interests of residents before government agen-**
23 **cies and seek administrative, legal or other appropriate remedies to**
24 **protect the health, safety, welfare and rights of residents.**
- 25 **“(i) Analyze, comment on and monitor the development and imple-**
26 **mentation of federal, state and local laws and other governmental**
27 **policies pertaining to the health, safety, welfare and rights of resi-**
28 **dents.**
- 29 **“(j) Recommend any changes to state or local laws to improve the**
30 **health, safety, welfare and rights of residents.**

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

3 **“(L) Train designees.**

4 **“(m) Promote the development of organizations to advocate on be-**
5 **half of residents of residential facilities.**

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

8 **“(o) Assist residents and individuals acting on their behalf in lo-**
9 **cating and accessing resources in the community and in connecting**
10 **with local service providers.**

11 **“(p) Engage the participation of residents in general studies, con-**
12 **ferences, inquiries or meetings related to residential care in this state.**

13 **“(q) Make recommendations for improvements in the functioning**
14 **of the residential facility system in this state.**

15 **“(r) Collaborate with the Oregon Health Authority, the Department**
16 **of Human Services, and any other appropriate agencies and organiza-**
17 **tions to establish a statewide system to collect and analyze informa-**
18 **tion on complaints about and conditions in residential facilities for the**
19 **purpose of publicizing improvements and resolving significant prob-**
20 **lems for residents.**

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

23 **“(t) Provide information to public agencies about the problems of**
24 **residents.**

25 **“(u) Collect and compile data necessary to prepare the report sub-**
26 **mitted to the Governor under ORS 182.500.**

27 **“(v) Adopt rules necessary for carrying out sections 1 to 8 of this**
28 **2017 Act, in accordance with ORS chapter 183, in consultation with the**
29 **Long Term Care Ombudsman and the Residential Ombudsman and**
30 **Public Guardianship Advisory Board.**

1 **“SECTION 3. (1) The Oregon Health Authority and the Department**
2 **of Human Services shall provide the Residential Facilities Ombudsman**
3 **and the designees monthly, in a format specified by the ombudsman,**
4 **updated demographic and licensing information regarding each resi-**
5 **dential facility for which the Residential Facilities Ombudsman has**
6 **responsibilities under this section.**

7 **“(2) All state agencies, their representatives and service providers**
8 **shall cooperate with and assist the Residential Facilities Ombudsman**
9 **and designees in the performance of the ombudsman’s duties and**
10 **functions.**

11 **“SECTION 4. (1) The Residential Facilities Ombudsman shall, in**
12 **consultation with the Long Term Care Ombudsman, appoint designees**
13 **to serve as representatives of the ombudsman in local communities.**
14 **The ombudsman shall regularly monitor the functions of designees.**

15 **“(2) The Residential Facilities Ombudsman shall prescribe the**
16 **qualifications of designees by rule.**

17 **“(3) To be appointed as a designee, a person must complete an ini-**
18 **tial training prescribed by the Residential Facilities Ombudsman by**
19 **rule and attend required continuing educational training sessions that**
20 **are approved by the ombudsman.**

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

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

26 **“(a) Have private and unimpeded access to residential facilities and**
27 **residents at any time considered necessary and reasonable by the om-**
28 **budsman or the designee for the purpose of:**

29 **“(A) Investigating and resolving complaints made by or on behalf**
30 **of residents, including by subpoenaing any person to appear and give**

1 **sworn testimony or to produce documentary or other evidence that is**
2 **reasonably material to the matter under investigation;**

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

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

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

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

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

9 **“(b) Notwithstanding ORS 192.553 to 192.581, have access to all of the**
10 **following if necessary to investigate a complaint:**

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

13 **“(B) For a resident who is unable to communicate consent and the**
14 **resident’s legal representative denies consent, access to the resident’s**
15 **records without consent if the ombudsman has reasonable cause to**
16 **believe that the legal representative is not acting in the resident’s best**
17 **interests.**

18 **“(C) Records of any public agency, including abuse reports main-**
19 **tained under ORS 430.757.**

20 **“(c) Have access to, upon request, copies of all licensing and certi-**
21 **fication records, including records of corrective actions, maintained**
22 **by the Department of Human Services or the Oregon Health Authority**
23 **with respect to residential facilities.**

24 **“(d) Have access to the administrative records, policies and docu-**
25 **ments of residential facilities to which residents or the general public**
26 **has access.**

27 **“(e) Conduct each investigation in a manner that does not signif-**
28 **icantly disrupt the provision of residential care or treatment to resi-**
29 **dents.**

30 **“(f) Show identification to the person in charge of a facility prior**

1 to entering the facility.

2 “(2) The Residential Facilities Ombudsman shall enter into
3 confidentiality agreements with the department and with the author-
4 ity permitting the ombudsman and each designee to have access to
5 electronic records of the department and the authority that are nec-
6 essary to carry out the duties of the ombudsman. The agreement must
7 ensure that records obtained by the ombudsman from the department
8 or the authority that are confidential, privileged or otherwise pro-
9 tected from disclosure are not further disclosed, except as permitted
10 by state and federal law.

11 **“SECTION 6. (1) If a complaint is made on behalf of a resident who**
12 **has limited or no decision-making capacity and is unable to commu-**
13 **nicate consent for the Residential Facilities Ombudsman to investigate**
14 **the complaint, and:**

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

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

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

21 “(b) The resident has a legal representative who refuses to provide
22 consent to the investigation, the ombudsman may proceed without
23 consent if the ombudsman has reasonable cause to believe that it is
24 in the resident’s best interests.

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

28 “(3) Following an investigation of a complaint, the Residential Fa-
29 cilities Ombudsman or a designee shall report the ombudsman’s
30 findings and conclusions to the resident who made the complaint and

1 to a complainant acting on behalf of a resident. If the ombudsman or
2 designee finds conditions threatening the health, safety or welfare of
3 a resident that cannot be resolved informally, the ombudsman or
4 designee shall refer the findings to the Department of Human Services,
5 the Oregon Health Authority or law enforcement officials.

6 “(4) A resident shall have the right to participate in planning any
7 course of action to be taken on behalf of the resident by the ombuds-
8 man or the designee.

9 “(5) A resident or an individual who makes a complaint to the
10 Residential Facilities Ombudsman under this section, or who partic-
11 ipates in an investigation of a complaint, may not be subjected to a
12 penalty, sanction or restriction or be denied any right, privilege or
13 benefit on account of making the complaint or participating in the
14 investigation of the complaint.

15 “(6) The Department of Human Services shall prohibit retaliation
16 or reprisals by a residential facility or other entity with respect to any
17 resident, employee or other person who files a complaint, provides in-
18 formation or otherwise cooperates with the Residential Facilities Om-
19 budsman or a designee and shall provide by rule for appropriate
20 sanctions with respect to the retaliation and reprisals.

21 “(7) In order to encourage residents and individuals acting on behalf
22 of residents to communicate with the Residential Facilities Ombuds-
23 man or designee, any resident or individual acting on behalf of a res-
24 ident who makes a complaint to the Residential Facilities Ombudsman
25 in good faith under this section or who participates in an investigation
26 of a complaint shall have immunity from any civil or criminal liability
27 that might otherwise be incurred or imposed with respect to the
28 communication.

29 **“SECTION 7. (1) The Residential Facilities Ombudsman shall pre-**
30 **pare and distribute to each residential facility in this state a written**

1 notice describing the procedures to follow in making a complaint, in-
2 cluding the address and telephone number of the ombudsman and
3 designee, if any, and a poster describing the Residential Facilities
4 Ombudsman Program and providing contact information. The De-
5 partment of Human Services shall facilitate the distribution of infor-
6 mation regarding the Residential Facilities Ombudsman Program to
7 residents, providers and the public.

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

14 “SECTION 8. The Residential Facilities Ombudsman shall establish
15 procedures to maintain the confidentiality of the records and files of
16 residents. The procedures must meet the following requirements:

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

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

26 “SECTION 9. The Residential Facilities Ombudsman appointed un-
27 der section 2 of this 2017 Act may solicit and accept, gifts, grants and
28 donations from public and private sources for the purpose of carrying
29 out sections 1 to 8 of this 2017 Act and the moneys shall be deposited
30 in the Long Term Care Ombudsman Account established under ORS

1 **441.419.**

2
3 **“OFFICE OF THE LONG TERM CARE OMBUDSMAN**

4
5 **“SECTION 10.** ORS 441.402 is amended to read:

6 “441.402. As used in ORS 441.402 to 441.419:

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

11 “[~~(1)~~] **(2) ‘Designee’ means an individual appointed by the Long Term Care**
12 **Ombudsman under ORS 441.413 to serve as a representative in a local**
13 **community in order to carry out the purpose of ORS 441.402 to 441.419.**

14 “[~~(2)~~] *‘Residential facility’ includes a:*]

15 “[~~(a)~~] *Long term care facility;*]

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

17 “[~~(A)~~] *Facility housing persons committed under ORS 161.327; and*]

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

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

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

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

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

25 **“(a) Any licensed skilled nursing facility or intermediate care fa-**
26 **cility, as defined in rules adopted under ORS 442.015;**

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

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

30 **“(d) Continuing care retirement communities, as defined in ORS**

1 **101.020.**

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

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

5 “441.403. (1) The office of the Long Term Care Ombudsman is established.
6 The Long Term Care Ombudsman shall function separately and independ-
7 ently from any other state agency. The Governor shall appoint the Long
8 Term Care Ombudsman for a four-year term from a list of three nominees
9 nominated by the [*Residential Facilities Advisory Committee*] **Residential**
10 **Ombudsman and Public Guardianship Advisory Board** established under
11 ORS 441.416. The appointment of the Long Term Care Ombudsman is subject
12 to Senate confirmation under ORS 171.562 and 171.565. A vacancy shall be
13 filled within 60 days in the same manner as an appointment is made.

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

18 “(3) The Long Term Care Ombudsman shall have background and experi-
19 ence in the following areas:

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

21 “(b) Physical or behavioral health care;

22 “(c) Working with community programs;

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

25 “(e) Working with health care providers;

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

27 “(g) Administrative and managerial experience.

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

29 “441.406. (1) The [*office of the*] Long Term Care Ombudsman shall carry
30 out the following duties:

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

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

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

13 “(d) Provide information to public agencies about the problems of resi-
14 dents of [*residential*] **long term care** facilities.

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

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

19 “(g) Collaborate with the Oregon Health Authority, the Department of
20 Human Services, the Nursing Home Administrators Board and any other
21 appropriate agencies and organizations to establish a statewide system to
22 collect and analyze information on complaints and conditions in
23 [*residential*] **long term care** facilities for the purpose of publicizing im-
24 provements and resolving significant problems.

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

28 “[*(B) Contract with qualified individuals and entities to provide programs,*
29 *services and assistance to persons receiving public guardian and conservator*
30 *services under ORS 125.675 to 125.687 who are located in areas of this state*”

1 *where such programs, services and other assistance are inadequate or nonex-*
2 *istent; and]*

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

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

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

13 “(k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after
14 consultation with the [*Residential Facilities Advisory Committee*] **Residen-**
15 **tial Ombudsman and Public Guardianship Advisory Board.**

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

18 “(m) Prepare necessary reports with the assistance of the authority and
19 the department.

20 “(n) Supervise, monitor, advise and support the Oregon Public Guardian
21 and Conservator appointed under ORS 125.678 **and the Residential Facili-**
22 **ties Ombudsman appointed under section 2 of this 2017 Act.**

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

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

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

2 “441.407. The Long Term Care Ombudsman shall establish procedures to
3 maintain the confidentiality of the records and files of residents of [*residen-*
4 *tial*] **long term care** facilities. These procedures must meet the following
5 requirements:

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

10 “(2) The identity of any complainant or resident on whose behalf a com-
11 plaint is made, or individual providing information on behalf of the
12 complainant or the resident, shall be confidential. If the complaint becomes
13 the subject of judicial proceedings, the investigative information held by the
14 ombudsman or **the** designee shall be disclosed for the purpose of the pro-
15 ceedings if requested by the court.

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

17 “441.408. (1) The Long Term Care Ombudsman and each designee shall
18 have the right of entry into [*residential*] **long term care** facilities at any
19 time considered necessary and reasonable by the ombudsman or the designee
20 for the purpose of:

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

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

24 “(c) Offering the services of the ombudsman or the designee to any resi-
25 dent, in private;

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

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

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

29 “(2)(a) The [*Long Term Care*] ombudsman shall have access to any
30 resident’s records, and to records of any public agency necessary to the du-

1 ties of the ombudsman, including records on [*patient abuse complaints*] **re-**
2 **ports of resident abuse** made pursuant to ORS [*430.735 to 430.765,*] **124.050**
3 **to 124.095,** 441.630 to 441.680 and 441.995. The provisions of ORS 192.553 to
4 192.581 are not intended to limit the access of the [*Long Term Care*] om-
5 budsman to medical records of residents of [*residential*] **long term care** fa-
6 cilities. **If necessary to investigate a complaint,** designees [*may*] **shall**
7 have access to individual resident’s records, including medical records as
8 authorized by the resident or **the** resident’s legal representative[, *if needed*
9 *to investigate a complaint*].

10 “(b) **If a resident’s legal representative denies access to the**
11 **resident’s records by the ombudsman or a designee, the ombudsman**
12 **shall have access to the records if the ombudsman has reasonable**
13 **cause to believe that the legal representative is not acting in the best**
14 **interests of the resident.**

15 “(3) **The ombudsman shall enter into confidentiality agreements**
16 **with the Department of Human Services and with the Oregon Health**
17 **Authority permitting the ombudsman and each designee to have ac-**
18 **cess to electronic records of the department and the authority that**
19 **are necessary to carry out the duties of the ombudsman. The agree-**
20 **ment must ensure that records obtained by the ombudsman from the**
21 **department or the authority that are confidential, privileged or oth-**
22 **erwise protected from disclosure are not further disclosed, except as**
23 **permitted by state and federal law.**

24 “[3] (4) Entry and investigation authorized by this section shall be done
25 in a manner that does not disrupt significantly the providing of nursing,
26 residential or other personal care or treatment to residents.

27 “[4] (5) The ombudsman or the designee must show identification to the
28 person in charge of the facility. The resident shall have the right to refuse
29 to communicate with the ombudsman or the designee. The refusal shall be
30 made directly to the ombudsman or the designee and not through an inter-

1 mediary.

2 “[5] (6) The resident shall have the right to participate in planning any
3 course of action to be taken on behalf of the resident by the ombudsman or
4 the designee.

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

6 “441.409. (1) Following an investigation, the Long Term Care Ombudsman
7 or the designee shall report opinions or recommendations to the party or
8 parties affected and, if appropriate, shall attempt to resolve the complaint
9 using informal techniques of mediation, conciliation and persuasion. Com-
10 plaints of conditions adversely affecting residents of [*residential*] **long term**
11 **care** facilities, or complaints of conditions threatening the safety or well-
12 being of residents that cannot be resolved in the manner described in this
13 section, shall be referred to an appropriate state agency.

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

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

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

24 “(2) The administrator of each [*residential*] **long term care** facility shall
25 post the written notice and poster required by this section in conspicuous
26 places in the facility in accordance with procedures provided by the om-
27 budsman and shall give the written notice to each resident and legally ap-
28 pointed guardian, if any.

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

30 “441.412. (1) Any employee or agent of a [*residential*] **long term care** fa-

1 cility acting in good faith in discussing resident care pursuant to ORS
2 441.408 shall have immunity from any civil liability that might otherwise be
3 incurred or imposed with respect to the making of such report.

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

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

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

14 “441.413. (1) The [*appointments of designees shall be made in consultation*
15 *with a local screening committee*] **Long Term Care Ombudsman shall ap-**
16 **point designees in consultation with local screening committees** that
17 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*
25 *authority.*]

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

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

28 “(2) To be appointed as a designee, a person must complete [*six days of*]
29 **an initial training, as prescribed by the Long Term Care Ombudsman**
30 **by rule**, and attend quarterly training sessions that are approved by the

1 [Long Term Care] ombudsman and that shall be coordinated and funded by
2 the Department of Human Services and the Oregon Health Authority, subject
3 to the availability of funds. Local screening committees shall be appointed
4 by and serve at the pleasure of the ombudsman.

5 “(3) Designees must sign a contract with the state that outlines the scope
6 of their duties. In districts where a designee is an employee or agent of a
7 local entity, a three-party contract shall be executed. Violation of the con-
8 tract is cause for the termination of the appointment. A directory of all
9 designees shall be maintained in the office of the Long Term Care Ombuds-
10 man.

11 “(4) The qualifications of designees shall include experience with [*resi-*
12 *dential facilities*] **long term care facilities** or residents or potential resi-
13 dents of [*residential facilities*] **long term care facilities**, and the ability to
14 communicate well, to understand laws, rules and regulations, and to be
15 assertive, yet objective.

16 “(5) Applicants who have experience in either social service, mental
17 health, developmental disability services, gerontology, nursing or paralegal
18 work shall be given preference in the appointment of designees.

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

21 “(a) Promote rapport and trust between the residents and staff of the
22 [*residential facilities*] **long term care facilities** and Long Term Care Om-
23 budsman;

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

26 “(c) Serve as an educational resource;

27 “(d) Receive, resolve or relay concerns to the Long Term Care Ombuds-
28 man or the appropriate agency; and

29 “(e) Ensure equitable resolution of problems.

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

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

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

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

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

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

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

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

12 “(e) Periodically review the [*patients’ bill of*] rights prescribed in ORS
13 441.605, 441.610 and 441.612, **and any other applicable rights to services,**
14 with residents, families, guardians, administrators and staff of [*residential*
15 *facilities*] **long term care facilities.**

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

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

18 “441.414. Nothing in ORS 441.402 to 441.419 shall affect the right of resi-
19 dents of a [*residential*] **long term care** facility to see visitors of their choice.

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

21 “441.416. (1) There is established a [*Residential Facilities Advisory Com-*
22 *mittee*] **Residential Ombudsman and Public Guardianship Advisory**
23 **Board** of 11 members to be appointed in the following manner:

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

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

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

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

28 “(e) One person appointed by the Governor from each list of four names
29 submitted by organizations for seniors, organizations for persons with mental
30 illness and the Oregon Council on Developmental Disabilities; and

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

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

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

12 “(4) The members of the [*committee*] **board** must be residents of this state
13 who are broadly representative, to the extent possible, of persons residing in
14 residential facilities **as defined in section 1 of this 2017 Act or long term**
15 **care facilities**, including members of racial and ethnic minorities, who have
16 knowledge and interest in the problems of persons residing in residential
17 facilities, and who are representative of all areas of this state and the de-
18 mographics of groups served by the Long Term Care Ombudsman.

19 “(5) A member of the [*committee*] **board** may not have a financial or
20 fiduciary interest in residential facilities **as defined in section 1 of this**
21 **2017 Act, long term care facilities** or service providers, or involvement in
22 the licensing or certification of residential facilities, **long term care facil-**
23 **ities** or service providers.

24 “(6) The [*committee*] **board** shall select one of its members as chairperson
25 and another as vice chairperson, for such terms and with duties and powers
26 necessary for the performance of the functions of such offices as the [*com-*
27 *mittee*] **board** determines.

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

1 “(8) The [committee] **board** shall meet at least once each month at a place,
2 day and hour determined by the [committee] **board**. The [committee] **board**
3 also shall meet at other times and places specified by the call of the chair-
4 person or of a majority of the members of the [committee] **board**. The [com-
5 mittee] **board** shall confer each month with the Long Term Care Ombudsman.
6 All meetings are subject to ORS 192.610 to 192.690.

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

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

10 “441.417. The [*Residential Facilities Advisory Committee*] **Residential**
11 **Ombudsman and Public Guardianship Advisory Board** shall:

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

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

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

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

19 “441.418. (1) A residential facility **as defined in section 1 of this 2017**
20 **Act or a long term care facility** that files a complaint against a designee
21 appointed under ORS 441.413 and objects to the action of the Long Term
22 Care Ombudsman in resolving the complaint may appeal the ombudsman’s
23 action to a panel of the [*Residential Facilities Advisory Committee*] **Resi-**
24 **dential Ombudsman and Public Guardianship Advisory Board.**

25 “(2) The [committee] **board** on its own motion may review any action by
26 the ombudsman appealable under this section. The review shall provide an
27 opportunity for written and oral presentation by the residential facility **as**
28 **defined in section 1 of this 2017 Act or a long term care facility** and the
29 ombudsman. The [committee] **board** shall issue its findings and any in-
30 structions to the ombudsman in written form consistent with the federal

1 Older Americans Act or other applicable federal law.

2 “(3) If the [*committee*] **board** disagrees with the action of the ombudsman,
3 the [*committee*] **board** may refer the resolution back to the ombudsman with
4 instructions consistent with the federal Older Americans Act or other ap-
5 plicable federal law to conform the ombudsman’s action in the matter to the
6 recommendations of the [*committee*] **board**.

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

8 “441.419. The Long Term Care Ombudsman Account is established in the
9 State Treasury, separate and distinct from the General Fund. All miscella-
10 neous receipts, gifts and federal and other grants received by the Long Term
11 Care Ombudsman shall be deposited into the Long Term Care Ombudsman
12 Account and are continuously appropriated to the Long Term Care Ombuds-
13 man for carrying out the responsibilities **of the office** of the Long Term
14 Care Ombudsman and the Oregon Public Guardian and Conservator.

15 **“SECTION 24. ORS 441.418 is added to and made a part of ORS**
16 **441.402 to 441.419.**

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

18 “125.678. (1) The Long Term Care Ombudsman appointed under ORS
19 441.403, in consultation with the [*Residential Facilities Advisory Committee*]
20 **Residential Ombudsman and Public Guardianship Advisory Board**, shall
21 appoint the Oregon Public Guardian and Conservator in the office of the
22 Long Term Care Ombudsman for a four-year term. The Oregon Public
23 Guardian and Conservator serves at the pleasure of the Long Term Care
24 Ombudsman and may be removed by the Long Term Care Ombudsman for
25 good cause. If there is a vacancy for any cause, the Long Term Care Om-
26 budsman shall make an appointment within 60 days. The Oregon Public
27 Guardian and Conservator shall receive a salary as fixed by the Long Term
28 Care Ombudsman and be reimbursed for all reasonable travel and other ex-
29 penses incurred in the performance of official duties.

30 “(2) The Oregon Public Guardian and Conservator shall be responsible for

1 carrying out the powers, duties and functions of the Oregon Public Guardian
2 and Conservator pursuant to ORS 125.675 to 125.687, within the office of the
3 Long Term Care Ombudsman, and subject to the direction, supervision and
4 control of the Long Term Care Ombudsman.

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

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

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

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

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

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

23 “(5) The Oregon Public Guardian and Conservator may delegate the ex-
24 ercise or discharge of any power, duty or function that is vested in or im-
25 posed by law upon the Oregon Public Guardian and Conservator to a deputy
26 public guardian and conservator, staff person or volunteer hired by or under
27 contract with the Oregon Public Guardian and Conservator as appropriate
28 for the purpose of conducting an official act in the name of the Oregon
29 Public Guardian and Conservator. The official act of any person acting in
30 the name of the Oregon Public Guardian and Conservator by the authority

1 of the Oregon Public Guardian and Conservator is an official act of the
2 Oregon Public Guardian and Conservator.

3 “(6) The Oregon Public Guardian and Conservator may solicit and accept
4 gifts, grants and donations from public and private sources for the purpose
5 of carrying out the provisions of ORS 125.675 to 125.687, which moneys shall
6 be deposited in the Long Term Care Ombudsman Account established under
7 ORS 441.419.

8

9 **“CONFORMING AMENDMENTS**

10

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

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

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

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

21 “(c) A representative of the Oregon Disabilities Commission, to be ap-
22 pointed by the commission;

23 “(d) A representative of the Oregon Association of Area Agencies on Ag-
24 ing and Disabilities, to be appointed by the Governor;

25 “(e) A representative of a senior or disabilities advocacy organization or
26 an individual who advocates on behalf of seniors or persons with disabilities,
27 to be appointed by the Governor;

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

1 House of Representatives;

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

6 “(h) A director of nurses of an Oregon long term care facility who has
7 practiced in this state in long term care for three years preceding appoint-
8 ment, to be appointed by the Speaker of the House of Representatives;

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

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

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

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

17 “(3) Members of the council shall receive no compensation for their ser-
18 vices but unpaid volunteers not otherwise compensated shall be allowed ac-
19 tual and necessary travel expenses incurred in the performance of their
20 duties.

21 “(4) The council shall:

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

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

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

30 “(d) Act in an advisory capacity to the department on matters pertaining

1 to quality of long term care facilities and community-based care facilities
2 and reimbursement for long term care services and community-based care
3 services.

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

5 “443.738. (1) Except as provided in subsection (3) of this section, all pro-
6 viders, resident managers and substitute caregivers for adult foster homes
7 shall satisfactorily meet all educational requirements established by the li-
8 censing agency. After consultation with representatives of providers, edu-
9 cators, residents’ advocates, [and] the Long Term Care Ombudsman **and the**
10 **Residential Facilities Ombudsman**, the licensing agency shall adopt by
11 rule standards governing the educational requirements. The rules shall re-
12 quire that a person may not provide care to any resident prior to acquiring
13 education or supervised training designed to impart the basic knowledge and
14 skills necessary to maintain the health, safety and welfare of the resident.
15 Each provider shall document compliance with the educational requirements
16 for persons subject to the requirements.

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

19 “(a) A requirement that, before being licensed, a provider successfully
20 completes training that satisfies a defined curriculum, including demon-
21 strations and practice in physical caregiving, screening for care and service
22 needs, appropriate behavior toward residents with physical, cognitive and
23 mental disabilities and issues related to architectural accessibility;

24 “(b) A requirement that a provider pass a test before being licensed or
25 becoming a resident manager. The test shall evaluate the ability to under-
26 stand and respond appropriately to emergency situations, changes in medical
27 conditions, physicians’ orders and professional instructions, nutritional
28 needs, residents’ preferences and conflicts; and

29 “(c) A requirement that, after being licensed, a provider or resident
30 manager successfully completes continuing education as described in ORS

1 443.742.

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

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

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

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

27 “(7) Providers shall give at least 30 days’ written notice to the residents,
28 and to the legal representative, guardian or conservator of any resident, be-
29 fore selling, leasing or transferring the adult foster home business or the real
30 property on which the adult foster home is located. Providers shall inform

1 real estate licensees, prospective buyers, lessees and transferees in all writ-
2 ten communications that the license to operate an adult foster home is not
3 transferable and shall refer them to the licensing agency for information
4 about licensing.

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

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

21 “(a) Psychoactive medications may be used only pursuant to a pre-
22 scription that specifies the circumstances, dosage and duration of use.

23 “(b) Physical restraints may be used only pursuant to a qualified
24 practitioner’s order that specifies the type, circumstances and duration of
25 use in accordance with rules adopted by the licensing agency. The rules
26 adopted by the licensing agency relating to physical restraints shall include
27 standards for use and training.

28 “(10) If the physical characteristics of the adult foster home do not en-
29 courage contact between caregivers and residents and among residents, the
30 provider shall demonstrate how regular positive contact will occur. Providers

1 may not place residents who are unable to walk without assistance in a
2 basement, split-level, second story or other area that does not have an exit
3 at ground level. Nonambulatory residents shall be given first floor rooms.

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

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

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

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

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

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

2 “443.767. (1) When the licensing agency receives a complaint that alleges
3 that a resident of a licensed adult foster home has been injured, abused or
4 neglected, and that the resident’s health or safety is in imminent danger, or
5 that the resident has died or been hospitalized, the investigation shall begin
6 immediately after the complaint is received. If the investigator determines
7 that the complaint is substantiated, the licensing agency shall take appro-
8 priate corrective action immediately.

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

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

24 “(4) The licensing agency shall take no longer than 60 days from the
25 completion of the investigation report to take appropriate corrective action
26 in the case of any complaint that the investigator determines to be substan-
27 tiated.

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

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

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

3 “(C) The facility; and

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

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

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

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

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

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

21 “476.030. (1) The State Fire Marshal shall enforce all statutes, and make
22 rules relating to:

23 “(a) The prevention of fires.

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

25 “(c) The maintenance and regulation of structural fire safety features in
26 occupied structures and overseeing the safety of and directing the means and
27 adequacy of exit in case of fire from factories, asylums, hospitals, churches,
28 schools, halls, theaters, amphitheaters, all buildings, except private resi-
29 dences, which are occupied for sleeping purposes, and all other places where
30 large numbers of persons work, live or congregate from time to time for any

1 purpose except that structural changes shall not be required in buildings
2 built, occupied and maintained in conformity with state building code regu-
3 lations applicable at the time of construction.

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

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

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

1 dations.

2 “(4) The State Fire Marshal may investigate or cause an investigation to
3 be made to determine the probable cause, origin and circumstances of any
4 fire and shall classify such findings as the State Fire Marshal may find ap-
5 propriate to promote fire protection and prevention.

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

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

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

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

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

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

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

7

8

“CAPTIONS

9

10 **“SECTION 30. The unit captions used in this 2017 Act are provided**
11 **only for the convenience of the reader and do not become part of the**
12 **statutory law of this state or express any legislative intent in the**
13 **enactment of this 2017 Act.**

14

15

“EMERGENCY CLAUSE

16

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

20
