

House Bill 2600

Sponsored by Representatives NATHANSON, LIVELY, MCKEOWN; Representatives DOHERTY, GOMBERG, GORSEK, HOLVEY, NOSSE, PILUSO, POWER, SALINAS, SCHOUTEN, WITT, Senators FREDERICK, GELSER, MANNING JR, MONNES ANDERSON, PROZANSKI, TAYLOR (Pre-session filed.)

SUMMARY

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

Requires long term care facilities and residential care facilities providing care to six or more residents to adopt specified protocols and procedures regarding preventing and reporting disease outbreaks. Requires administrators and certain employees of facilities to be trained in recognizing and reporting disease outbreaks.

Requires long term care facilities and residential care facilities providing care to six or more residents to have inspection by Oregon Health Authority to ensure compliance with health and sanitation laws.

Requires Long Term Care Ombudsman and Residential Facilities Ombudsman to inform staff at long term care facilities and residential care facilities about responsibility of staff to report disease outbreaks and about protections for staff who report disease outbreaks. Requires ombudsmen to report to licensing agency any disease outbreak reported to ombudsmen by facility staff.

A BILL FOR AN ACT

1
2 Relating to disease outbreaks in congregate care facilities; creating new provisions; and amending
3 ORS 433.004, 441.025, 441.406, 441.408, 443.382, 443.388 and 443.415.

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

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

6 (a) **"Disease outbreak" has the meaning given that term in ORS 431A.005.**

7 (b) **"Facility" means:**

8 (A) **A long term care facility, as defined in ORS 442.015;**

9 (B) **A conversion facility, as defined in ORS 443.400;**

10 (C) **A residential training facility, as defined in ORS 443.400; and**

11 (D) **A residential treatment facility, as defined in ORS 443.400.**

12 (c) **"Medical resource" means a physician, nurse practitioner or other health professional**
13 **that has prescribing privileges.**

14 (2) **An administrator of a facility and the employees of the facility, as specified by the**
15 **Department of Human Services by rule, must receive training in recognizing disease out-**
16 **breaks and infection control at the time of hiring, unless the administrator or the employees**
17 **have received the training at another facility no later than 18 months before the time of**
18 **hiring, and every 36 months thereafter. The department, in consultation with the Oregon**
19 **Health Authority and the Department of Justice, shall prescribe by rule the requirements for**
20 **the training, which must include at least the following:**

21 (a) **How to properly prevent and contain disease outbreaks; and**

22 (b) **The responsibility of staff members to report disease outbreaks under ORS 433.004.**

23 (3) **The training may be provided in person, in writing, by webinar or by other electronic**
24 **means.**

25 (4) **A facility that does not have an on-site medical director must have a medical resource**

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

1 available to provide advice on and evaluate the effectiveness of disease outbreak control
2 measures adopted by the facility and to coordinate with the local public health authority as
3 needed.

4 (5) Upon hiring a new staff member, a facility shall provide to the staff member infor-
5 mation about the rights and responsibility of facility staff members to report disease out-
6 breaks under ORS 433.004 and the safeguards for employees who report disease outbreaks.

7 (6) The Department of Human Services, in coordination with the authority, shall com-
8 municate regularly with facility administrators to recommend best practices and protocols
9 for preventing and responding to disease outbreaks and provide contacts for local public
10 health authorities.

11 **SECTION 2.** (1) An authorized representative of the Oregon Health Authority may in-
12 spect the premises of a facility, as defined in section 1 of this 2019 Act, to determine whether
13 the facility is in conformity with applicable health and sanitation laws.

14 (2) An authorized representative of the authority shall inspect any facility when re-
15 quested to do so by the Department of Human Services in accordance with arrangements
16 under section 3 of this 2019 Act, and shall submit written findings to the department. The
17 department shall not issue or renew a license for any facility for which an inspection by the
18 authority has been requested unless an authorized representative of the authority submits
19 a written finding that the facility is in compliance with applicable health and sanitation laws.

20 (3) An inspection may be performed by a private consultant so long as the consultant is
21 registered under ORS chapter 700.

22 **SECTION 3.** The Department of Human Services may enter into cooperative arrange-
23 ments with the Oregon Health Authority for the inspection of facilities under section 2 of
24 this 2019 Act. The arrangements shall designate which services shall be reimbursed and the
25 rate and manner of reimbursement.

26 **SECTION 4.** ORS 433.004 is amended to read:

27 433.004. (1) The Oregon Health Authority shall by rule:

28 (a) Specify reportable diseases **and when the diseases must be reported under this section;**

29 (b) Identify those categories of persons who must report reportable diseases and the circum-
30 stances under which the reports must be made;

31 (c) Prescribe the procedures and forms for making such reports and transmitting the reports to
32 the authority; and

33 (d) Prescribe measures and methods for investigating the source and controlling reportable dis-
34 eases.

35 (2) Persons required under the rules to report reportable diseases shall do so by reporting to the
36 local public health administrator. The local public health administrator shall transmit such reports
37 to the authority.

38 (3) The authority or local public health administrator may investigate a case of a reportable
39 disease, disease outbreak or epidemic. The investigation may include, but is not limited to:

40 (a) Interviews of:

41 (A) The subject of a reportable disease report;

42 (B) Controls;

43 (C) Health care providers; or

44 (D) Employees of a health care facility.

45 (b) Requiring a health care provider, any public or private entity, or an individual who has in-

1 formation necessary for the investigation to:

2 (A) Permit inspection of the information by the authority or local public health administrator;
3 and

4 (B) Release the information to the authority or local public health administrator.

5 (c) Inspection, sampling and testing of real or personal property with consent of the owner or
6 custodian of the property or with an administrative warrant.

7 (4)(a) The authority shall establish by rule the manner in which information may be requested
8 and obtained under subsection (3) of this section.

9 (b) Information requested may include, but is not limited to, individually identifiable health in-
10 formation related to:

11 (A) The case;

12 (B) An individual who may be the potential source of exposure or infection;

13 (C) An individual who has been or may have been exposed to or affected by the disease;

14 (D) Policies, practices, systems or structures that may have affected the likelihood of disease
15 transmission; and

16 (E) Factors that may influence an individual's susceptibility to the disease or likelihood of being
17 diagnosed with the disease.

18 (5) In addition to other grounds for which a state agency may exercise disciplinary action
19 against its licensees or certificate holders, the substantial or repeated failure of a licensee or cer-
20 tificate holder to report when required to do so under subsection (2) or (3) of this section shall be
21 cause for the exercise of any of the agency's disciplinary powers.

22 (6) Any person making a report or providing information under this section is immune from any
23 civil or criminal liability that might otherwise be incurred or imposed with respect to the making
24 of a report or providing information under this section.

25 **SECTION 5.** ORS 441.025, as amended by section 12, chapter 50, Oregon Laws 2018, is amended
26 to read:

27 441.025. (1)(a) Upon receipt of a license fee and an application to operate a health care facility
28 other than a long term care facility, the Oregon Health Authority shall review the application and
29 conduct an on-site inspection of the health care facility. The authority shall issue a license if it finds
30 that the applicant and health care facility comply with ORS 441.015 to 441.087 and 441.196 and the
31 rules of the authority provided that the authority does not receive within the time specified a cer-
32 tificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant
33 to ORS 479.215.

34 (b) The authority shall, following payment of the fee, annually renew each license issued under
35 this subsection unless:

36 (A) The health care facility's license has been suspended or revoked; or

37 (B) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
38 compliance pursuant to ORS 479.215.

39 (2)(a) Upon receipt of a license fee and an application to operate a long term care facility, the
40 Department of Human Services shall review the application and conduct an on-site inspection of the
41 long term care facility. The department shall issue a license if:

42 (A) The department finds that the applicant and long term care facility [*comply*] **are in sub-**
43 **stantial compliance** with ORS 441.015 to 441.087 and 441.196 **and section 1 of this 2019 Act** and
44 the rules of the department [*provided that it does not receive*];

45 (B) **The Oregon Health Authority has conducted an inspection and found that the long**

1 **term care facility is in compliance with health and sanitation laws; and**

2 (C) **The department has not received** within the time specified a certificate of noncompliance
 3 issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

4 (b) The department shall, following an on-site inspection and payment of the fee, annually renew
 5 each license issued under this subsection unless:

6 (A) The long term care facility's license has been suspended or revoked;

7 (B) The long term care facility is found not to be in substantial compliance, following the on-site
 8 inspection, **with ORS 441.015 to 441.087 and 441.196 and section 1 of this 2019 Act and the rules**
 9 **of the department;** or

10 (C) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
 11 compliance pursuant to ORS 479.215.

12 (3) Each license shall be issued only for the premises and persons or governmental units named
 13 in the application and shall not be transferable or assignable.

14 (4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by
 15 rule of the authority or the department.

16 (5) No license shall be issued or renewed for any health care facility or health maintenance
 17 organization that is required to obtain a certificate of need under ORS 442.315 until a certificate
 18 of need has been granted. An ambulatory surgical center is not subject to the certificate of need
 19 requirements in ORS 442.315.

20 (6) No license shall be issued or renewed for any skilled nursing facility or intermediate care
 21 facility, unless the applicant has included in the application the name and such other information
 22 as may be necessary to establish the identity and financial interests of any person who has incidents
 23 of ownership in the facility representing an interest of 10 percent or more thereof. If the person
 24 having such interest is a corporation, the name of any stockholder holding stock representing an
 25 interest in the facility of 10 percent or more shall also be included in the application. If the person
 26 having such interest is any other entity, the name of any member thereof having incidents of own-
 27 ership representing an interest of 10 percent or more in the facility shall also be included in the
 28 application.

29 (7) A license may be denied to any applicant for a license or renewal thereof or any stockholder
 30 of any such applicant who has incidents of ownership in the health care facility representing an
 31 interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for
 32 the facility, if during the five years prior to the application the applicant or any stockholder of the
 33 applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has
 34 divested that interest after receiving from the authority or the department written notice that the
 35 authority or the department intends to suspend or revoke the license or to decertify the facility from
 36 eligibility to receive payments for services provided under this section.

37 (8) The Department of Human Services may not issue or renew a license for a long term care
 38 facility, unless the applicant has included in the application the identity of any person who has in-
 39 cident of ownership in the long term care facility who also has a financial interest in any pharmacy,
 40 as defined in ORS 689.005.

41 (9) The authority shall adopt rules for each type of health care facility, except long term care
 42 facilities, to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

43 (a) Establishing classifications and descriptions for the different types of health care facilities
 44 that are licensed under ORS 441.015 to 441.087; and

45 (b) Standards for patient care and safety, adequate professional staff organizations, training of

1 staff for whom no other state regulation exists, suitable delineation of professional privileges and
 2 adequate staff analyses of clinical records.

3 (10) The department shall adopt rules for each type of long term care facility to carry out the
 4 purposes of ORS 441.015 to 441.087 including, but not limited to:

5 (a) Establishing classifications and descriptions for the different types of long term care facili-
 6 ties that are licensed under ORS 441.015 to 441.087; and

7 (b) Standards for patient care and safety, adequate professional staff organizations, training of
 8 staff for whom no other state regulation exists, suitable delineation of professional privileges and
 9 adequate staff analyses of clinical records.

10 (11) The authority or department may not adopt a rule requiring a health care facility to serve
 11 a specific food as long as the necessary nutritional food elements are present in the food that is
 12 served.

13 (12) A health care facility licensed by the authority or department may not:

14 (a) Offer or provide services beyond the scope of the license classification assigned by the au-
 15 thority or department; or

16 (b) Assume a descriptive title or represent itself under a descriptive title other than the classi-
 17 fication assigned by the authority or department.

18 (13) A health care facility must reapply for licensure to change the classification assigned or the
 19 type of license issued by the authority or department.

20 **SECTION 6.** ORS 443.415 is amended to read:

21 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
 22 made to the Department of Human Services or the Oregon Health Authority on forms provided for
 23 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
 24 No fee is required of any governmentally operated residential facility.

25 (2)(a) The application fee for a residential training facility or a residential treatment facility is
 26 \$60.

27 (b) The application fee for a residential training home is \$50.

28 (c) The application fee for a residential treatment home is \$30.

29 (d) The application fee for a residential care facility is:

30 (A) For a facility with one to 15 beds, \$2,000.

31 (B) For a facility with 16 to 49 beds, \$3,000.

32 (C) For a facility with 50 to 99 beds, \$4,000.

33 (D) For a facility with 100 to 150 beds, \$5,000.

34 (E) For a facility with more than 150 beds, \$6,000.

35 (3) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.
 36 The licensing agency shall:

37 (a) Issue a license to any applicant for operation of a residential facility **if:**

38 (A) **The residential facility is in substantial compliance with ORS 443.002 and 443.400 to**
 39 **443.455 and section 1 of this 2019 Act** and the rules of the licensing agency[. *Licensure may be*
 40 *denied when a residential facility is not in compliance with ORS 443.002 or 443.400 to 443.455 or the*
 41 *rules of the licensing agency. Licensure shall be denied if]; and*

42 (B) **For a residential training facility or a residential treatment facility, the Oregon**
 43 **Health Authority has conducted an inspection and found the facility to be in compliance with**
 44 **health and sanitation laws.**

45 (b) **Deny a license to an applicant for operation of a residential facility if:**

1 **(A) The residential facility is not in substantial compliance with ORS 443.002 and 443.400**
 2 **to 443.455 and section 1 of this 2019 Act and the rules of the licensing agency;**

3 **(B) The State Fire Marshal, deputy or approved authority has given notice of noncompliance**
 4 **of a residential care facility, residential training facility or residential treatment facility pursuant**
 5 **to ORS 479.220; or**

6 **(C) For a residential training facility or a residential treatment facility, the authority has**
 7 **conducted an inspection and found the facility to be out of compliance with health or sani-**
 8 **tation laws.**

9 **SECTION 7.** ORS 441.406, as amended by section 17, chapter 61, Oregon Laws 2018, is amended
 10 to read:

11 441.406. (1) The Long Term Care Ombudsman shall carry out the following duties:

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

16 **(b) Inform the staff at long term care facilities about their responsibility, under ORS**
 17 **433.004, to report disease outbreaks and about the protections for staff who report disease**
 18 **outbreaks.**

19 **(c) Notify the Department of Human Services about disease outbreaks reported by long**
 20 **term care facility staff to the ombudsman.**

21 [(b)] **(d)** Undertake, participate in or cooperate with persons and agencies in such conferences,
 22 inquiries, meetings or studies as may lead to improvements in the functioning of long term care fa-
 23 cilities.

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

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

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

30 [(f)] **(h)** Widely publicize the Long Term Care Ombudsman's services, purpose and mode of op-
 31 eration.

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

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

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

42 [(j)] **(L)** Specify qualifications and duties of designees.

43 [(k)] **(m)** Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with
 44 the Residential Ombudsman and Public Guardianship Advisory Board.

45 [(L)] **(n)** Provide periodically, or at least annually, a report to the Governor, authority, depart-

1 ment and Legislative Assembly.

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

3 [(n)] (p) Advise and support the Oregon Public Guardian and Conservator appointed under ORS
4 125.678.

5 [(o)] (q) Supervise, monitor, advise and support the Residential Facilities Ombudsman appointed
6 under ORS 443.382.

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

10 **SECTION 8.** ORS 441.408 is amended to read:

11 441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
12 into long term care facilities at any time considered necessary and reasonable by the ombudsman
13 or the designee for the purpose of:

- 14 (a) Investigating and resolving complaints made by residents or made on their behalf;
- 15 (b) Interviewing residents, with their consent, in private;
- 16 (c) Offering the services of the ombudsman or the designee to any resident, in private;
- 17 (d) Interviewing employees or agents of the facility;
- 18 (e) Consulting regularly with the facility administration; *[and]*

19 **(f) Informing staff about their responsibility, under ORS 433.004, to report disease out-**
20 **breaks and about the protections for staff who report disease outbreaks; and**

21 [(f)] (g) Providing services authorized by law or by rule.

22 (2)(a) The ombudsman shall have access to any resident's records, and to records of any public
23 agency necessary to the duties of the ombudsman, including records on reports of resident abuse
24 made pursuant to ORS 124.050 to 124.095 and 441.630 to 441.680. The provisions of ORS 192.553 to
25 192.581 are not intended to limit the access of the ombudsman to medical records of residents of long
26 term care facilities. If necessary to investigate a complaint, designees shall have access to individual
27 resident's records, including medical records as authorized by the resident or the resident's legal
28 representative.

29 (b) If a resident's legal representative denies access to the resident's records by the ombudsman
30 or a designee, the ombudsman shall have access to the records if the ombudsman has reasonable
31 cause to believe that the legal representative is not acting in the best interests of the resident.

32 (3) The ombudsman shall enter into confidentiality agreements with the Department of Human
33 Services and with the Oregon Health Authority permitting the ombudsman to have access to elec-
34 tronic records of the department and the authority that are necessary to carry out the duties of the
35 ombudsman. The agreement must ensure that records obtained by the ombudsman from the depart-
36 ment or the authority that are confidential, privileged or otherwise protected from disclosure are
37 not further disclosed, except as permitted by state and federal law.

38 (4) Entry and investigation authorized by this section shall be done in a manner that does not
39 disrupt significantly the providing of nursing, residential or other personal care or treatment to
40 residents.

41 (5) The ombudsman or the designee must show identification to the person in charge of the fa-
42 cility. The resident shall have the right to refuse to communicate with the ombudsman or the
43 designee. The refusal shall be made directly to the ombudsman or the designee and not through an
44 intermediary.

45 (6) The resident shall have the right to participate in planning any course of action to be taken

1 on behalf of the resident by the ombudsman or the designee.

2 **SECTION 9.** ORS 443.382 is amended to read:

3 443.382. (1) The Long Term Care Ombudsman, in consultation with the Residential Ombudsman
 4 and Public Guardianship Advisory Board established under ORS 441.416, shall appoint a Residential
 5 Facilities Ombudsman for a four-year term. The Residential Facilities Ombudsman serves at the
 6 pleasure of the Long Term Care Ombudsman and may be removed by the Long Term Care Om-
 7 budsman for cause. The Long Term Care Ombudsman shall fill any vacancy within 60 days. The
 8 salary of the Residential Facilities Ombudsman shall be determined by the Long Term Care Om-
 9 budsman. The Residential Facilities Ombudsman shall be reimbursed for all reasonable travel and
 10 other expenses incurred in the performance of the ombudsman’s official duties.

11 (2) The Residential Facilities Ombudsman may, subject to the approval of the Long Term Care
 12 Ombudsman, hire or contract with volunteers, staff, deputy ombudsmen and other qualified individ-
 13 uals as necessary to perform the duties of the ombudsman.

14 (3) The Residential Facilities Ombudsman shall:

15 (a) Identify, investigate and resolve complaints made by or on behalf of residents about admin-
 16 istrative actions.

17 (b) Provide residents, families of residents, guardians, community members and administrators
 18 and staff of residential facilities with information regarding the rights of residents as set forth in
 19 ORS 427.107 and 430.210 and any other applicable rights of residents.

20 (c) **Inform the staff at residential facilities about their responsibility, under ORS 433.004,**
 21 **to report disease outbreaks and about the protections for staff who report disease outbreaks.**

22 (d) **Notify the licensing agency about disease outbreaks reported by residential staff to**
 23 **the ombudsman.**

24 [(c)] (e) Widely publicize the Residential Facilities Ombudsman’s services, purpose and mode of
 25 operation.

26 [(d)] (f) Undertake, participate in or cooperate with persons and agencies in conferences, in-
 27 quiries, meetings or studies that may lead to improvements in the functioning of residential facili-
 28 ties.

29 [(e)] (g) Work closely with associations and citizen groups in this state and the state protection
 30 and advocacy system under ORS 192.517.

31 [(f)] (h) Provide services to residents to assist them in protecting their health, safety, welfare
 32 and rights.

33 [(g)] (i) Ensure that residents have regular, timely, private and unimpeded access to the Resi-
 34 dential Facilities Ombudsman’s services and that a resident or an individual acting on behalf of a
 35 resident who files a complaint receives a timely response to the complaint from the ombudsman or
 36 a designee.

37 [(h)] (j) Represent the interests of residents before government agencies and seek administrative,
 38 legal or other appropriate remedies to protect the health, safety, welfare and rights of residents.

39 [(i)] (k) Analyze, comment on and monitor the development and implementation of federal, state
 40 and local laws and other governmental policies pertaining to the health, safety, welfare and rights
 41 of residents.

42 [(j)] (L) Recommend any changes to state or local laws to improve the health, safety, welfare
 43 and rights of residents.

44 [(k)] (m) Facilitate public comment on laws and policies that affect the health, safety, welfare
 45 and rights of residents.

- 1 *[(L)]* **(n)** Train designees.
- 2 *[(m)]* **(o)** Promote the development of organizations to advocate on behalf of residents of resi-
 3 dential facilities.
- 4 *[(n)]* **(p)** To the extent practicable, assist residents who move from a residential facility to a
 5 home care setting.
- 6 *[(o)]* **(q)** Assist residents and individuals acting on their behalf in locating and accessing re-
 7 sources in the community and in connecting with local service providers.
- 8 *[(p)]* **(r)** Engage the participation of residents in general studies, conferences, inquiries or
 9 meetings related to residential care in this state.
- 10 *[(q)]* **(s)** Make recommendations for improvements in the functioning of the residential facility
 11 system in this state.
- 12 *[(r)]* **(t)** Collaborate with the Oregon Health Authority, the Department of Human Services, and
 13 any other appropriate agencies and organizations to establish a statewide system to collect and
 14 analyze information on complaints about and conditions in residential facilities for the purpose of
 15 publicizing improvements and resolving significant problems for residents.
- 16 *[(s)]* **(u)** Provide information to public agencies about the problems of residents.
- 17 *[(t)]* **(v)** Collect and compile data necessary to prepare the report submitted to the Governor
 18 under ORS 182.500.
- 19 *[(u)]* **(w)** Adopt rules necessary for carrying out ORS 443.380 to 443.394, in accordance with ORS
 20 chapter 183, in consultation with the Long Term Care Ombudsman and the Residential Ombudsman
 21 and Public Guardianship Advisory Board.
- 22 **SECTION 10.** ORS 443.388 is amended to read:
- 23 443.388. (1) The Residential Facilities Ombudsman and each designee shall:
- 24 (a) Have private and unimpeded access to residential facilities and residents at any time con-
 25 sidered necessary and reasonable by the ombudsman or the designee for the purpose of:
- 26 (A) Investigating and resolving complaints made by or on behalf of residents, including by
 27 subpoenaing any person to appear and give sworn testimony or to produce documentary or other
 28 evidence that is reasonably material to the matter under investigation;
- 29 (B) Offering the services of the ombudsman or the designee to any resident, in private;
- 30 (C) Interviewing residents, with their consent, in private;
- 31 (D) Interviewing employees or agents of the facility;
- 32 (E) Consulting regularly with the facility administration; *[and]*
- 33 **(F) Informing staff about their responsibility, under ORS 433.004, to report disease out-**
 34 **breaks and about the protections for staff who report disease outbreaks; and**
- 35 *[(F)]* **(G)** Providing other services authorized by law or by rule.
- 36 (b) Notwithstanding ORS 192.553 to 192.581, have access to all of the following if necessary to
 37 investigate a complaint:
- 38 (A) Residents' records, including medical records with the consent of a resident or a resident's
 39 representative.
- 40 (B) For a resident who is unable to communicate consent and the resident's legal representative
 41 denies consent, access to the resident's records without consent if the ombudsman has reasonable
 42 cause to believe that the legal representative is not acting in the resident's best interests.
- 43 (C) For a resident who is unable to communicate consent and does not have a legal represen-
 44 tative, access to the resident's records, including medical records, without consent if the ombudsman
 45 or designee believes that the information is necessary for the investigation of the complaint.

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

2 (c) Have access to, upon request, copies of all licensing and certification records, including re-
3 cords of corrective actions, maintained by the Department of Human Services or the Oregon Health
4 Authority with respect to residential facilities.

5 (d) Have access to the administrative records, policies and documents of residential facilities to
6 which residents or the general public has access.

7 (e) Conduct each investigation in a manner that does not significantly disrupt the provision of
8 residential care or treatment to residents.

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

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

16 **SECTION 11. Sections 1 to 3 of this 2019 Act and the amendments to ORS 433.004, 441.025,**
17 **441.406, 441.408, 443.382, 443.388 and 443.415 by sections 4 to 10 of this 2019 Act apply to the**
18 **issuance or renewal of a license by the Department of Human Services for a long term care**
19 **facility, or by the department or the Oregon Health Authority for a residential care facility,**
20 **on or after the effective date of this 2019 Act.**

21
