

House Bill 3254

Sponsored by Representatives STARK, SANCHEZ

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**.

Establishes Office of Oregon Ombudsmen to provide administrative services and support to Office of the Long Term Care Ombudsman, Office of the Residential Facilities Ombudsman, Office of the Foster Parent Ombudsman, Office of the Foster Child Ombudsman and Office of the Oregon Public Guardian and Conservator. Specifies duties of administrator of Office of Oregon Ombudsmen.

Establishes and specifies duties and powers of Foster Parent Ombudsman and Foster Child Ombudsman. Requires 24-hour hotline telephone number for foster parents to make complaints. Requires Department of Human Services to notify foster parents and foster children of availability of Foster Child Ombudsman and Foster Parent Ombudsman to investigate complaints.

Modifies duties and powers of Long Term Care Ombudsman, Residential Facilities Ombudsman and Oregon Public Guardian and Conservator. Gives ombudsmen access to records necessary for investigating complaints, subject to conditions.

Establishes advisory committees for ombudsman offices and Office of the Oregon Public Guardian and Conservator.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to ombudsmen; creating new provisions; amending ORS 21.007, 125.060, 125.075, 125.678, 125.680, 125.687, 410.550, 418.201, 418.648, 418.992, 419B.005, 441.403, 441.406, 441.408, 441.411, 441.413, 441.416, 441.417, 441.418, 443.380, 443.382, 443.386, 443.396, 443.447, 443.455, 443.738, 443.767, 443.825 and 443.878; repealing ORS 441.419; and declaring an emergency.

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

OFFICE OF OREGON OMBUDSMEN

SECTION 1. (1) The Office of Oregon Ombudsmen is established to provide administrative services and support to the:

- (a) Office of the Long Term Care Ombudsman;**
- (b) Office of the Residential Facilities Ombudsman;**
- (c) Office of the Oregon Public Guardian and Conservator;**
- (d) Office of the Foster Parent Ombudsman; and**
- (e) Office of the Foster Child Ombudsman.**

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

- (a) Shall perform all administrative functions of the office;**
- (b) May appoint subordinate officers and employees for the office, prescribe their duties and set their compensation; and**
- (c) Shall, at least annually, provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, on the activities of the offices listed in subsection (1) of this section.**

SECTION 2. The Office of Oregon Ombudsmen Account is established in the State

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 Treasury, separate and distinct from the General Fund. The Office of the Long Term Care
 2 Ombudsman, the Office of the Residential Facilities Ombudsman, the Office of the Foster
 3 Child Ombudsman and the Office of the Foster Parent Ombudsman shall each have a dedi-
 4 cated subaccount in the Office of Oregon Ombudsmen Account. All miscellaneous receipts,
 5 gifts and federal and other grants received by the Office of the Long Term Care Ombudsman,
 6 the Office of the Residential Facilities Ombudsman, the Office of the Foster Child Ombuds-
 7 man and the Office of the Foster Parent Ombudsman shall be deposited in and are contin-
 8 uously appropriated to the corresponding subaccount of each office.

9
 10 **FOSTER CHILD OMBUDSMAN**

11
 12 **SECTION 3.** Sections 4 to 8 and 11 to 15 of this 2019 Act are added to and made a part
 13 of ORS chapter 418.

14 **SECTION 4.** (1) As used in this section:

15 (a) “Foster child” has the meaning given that term in ORS 418.200.

16 (b) “Foster parent” means an individual who has a certificate to operate a foster home
 17 issued under ORS 418.635 and who is providing care to a foster child in the individual’s home.

18 (2) The Office of the Foster Child Ombudsman is established. The Governor shall appoint
 19 the Foster Child Ombudsman in consultation with the Foster Child Ombudsman Advisory
 20 Committee established in section 7 of this 2019 Act. The ombudsman shall be appointed for
 21 a four-year term. The Governor shall fill a vacancy in the position no later than 60 days after
 22 the vacancy occurs, in the same manner as the appointment is made.

23 (3) The Foster Child Ombudsman shall:

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

26 (b) Investigate any complaint made by or on behalf of a foster child if the allegations
 27 contained in the complaint may adversely affect the health, safety, welfare or rights of the
 28 foster child;

29 (c) Assist foster children and individuals acting on their behalf in identifying and ac-
 30 cessing resources in the community and in connecting with local service providers;

31 (d) Encourage foster children and individuals acting on behalf of foster children to par-
 32 ticipate in general studies, conferences, inquiries or meetings related to foster care in this
 33 state;

34 (e) Organize or collaborate with others in organizing general studies, conferences, in-
 35 quiries or meetings to develop recommendations for improving the foster care system in this
 36 state;

37 (f) Monitor the development and implementation of federal, state and local laws and pol-
 38 icies that impact the foster care system in this state;

39 (g) Collect and compile data necessary to prepare the report submitted to the Governor
 40 under ORS 182.500 and provide a copy of the report to the Governor’s Child Foster Care
 41 Advisory Commission established in ORS 418.041; and

42 (h) Provide information to state and local agencies about problems identified and reforms
 43 undertaken in the foster care system in this state and work closely with associations and
 44 citizen groups and with the state protection and advocacy system under ORS 192.517.

45 (4)(a) The Foster Child Ombudsman shall:

1 (A) Maintain the hotline telephone number for foster children required by ORS 418.201
2 (7); and

3 (B) In consultation with the Foster Child Ombudsman Advisory Committee, establish
4 procedures for a foster child or an individual acting on behalf of a foster child to make a
5 complaint about the child's care or about the interaction with individuals or agencies in-
6 volved in the foster care system.

7 (b)(A) The ombudsman and each designee appointed under section 5 of this 2019 Act shall
8 have access to records of any public agency, to the extent permitted by state and federal law,
9 that are necessary to carry out the duties of the ombudsman. The provisions of ORS 192.553
10 to 192.581 are not intended to limit the access of the ombudsman to a foster child's records,
11 including medical records as authorized by the foster child or an individual legally authorized
12 to act on behalf of the foster child, if needed to investigate a complaint.

13 (B) The ombudsman and the Department of Human Services shall enter into a
14 confidentiality agreement permitting the ombudsman and each designee to have access to
15 electronic records of the department that are necessary to carry out the duties of the om-
16 budsman, if permitted by state and federal law. The agreement must ensure that records
17 obtained by the ombudsman from the department that are confidential, privileged or other-
18 wise protected from disclosure are not further disclosed, except as permitted by state and
19 federal law.

20 (c) The ombudsman or a designee shall report to a foster child and to an individual that
21 makes a complaint on behalf of the foster child the findings of the ombudsman or designee
22 in the investigation of the complaint and may make recommendations. If appropriate, the
23 ombudsman or designee shall attempt to resolve the complaint using informal mediation or
24 conflict resolution techniques. Complaints of conditions threatening the safety or well-being
25 of a foster child must be reported to the department or law enforcement officials.

26 (d) A foster child or an individual legally authorized to act on behalf of the foster child
27 shall have the right to participate in planning any course of action to be taken on behalf of
28 the foster child by the ombudsman or the designee.

29 (5) A foster child, or an individual acting on behalf of a foster child, who makes a com-
30 plaint to the Foster Child Ombudsman in good faith under this section, or who participates
31 in an investigation of a complaint:

32 (a) May not be subjected to a penalty, sanction or restriction, or be denied any right,
33 privilege or benefit, on account of making the complaint or participating in the investigation
34 of the complaint; and

35 (b) Shall have immunity from any civil or criminal liability that might otherwise be in-
36 curred or imposed on account of making the complaint or participating in the investigation
37 of the complaint.

38 (6) All state agencies shall cooperate with and assist the Foster Child Ombudsman in the
39 performance of the ombudsman's duties and functions.

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

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

- 1 (a) The Department of Human Services.
- 2 (b) Elected officials.
- 3 (c) The Oregon Health Authority.
- 4 (d) Foster youth or former foster children.
- 5 (e) Court appointed special advocates.
- 6 (f) Local citizen review boards.

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

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

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

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

16 **SECTION 6.** The Foster Child Ombudsman shall establish procedures to maintain the
17 confidentiality of the records and files of foster children. The procedures must meet the
18 following requirements:

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

24 (2) The identity of any foster child or individual providing information on behalf of the
25 foster child shall be confidential. If the complaint becomes the subject of judicial pro-
26 ceedings, the investigative information held by the Foster Child Ombudsman or designee
27 shall be disclosed for the purpose of the proceedings if requested by the court.

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

31 **SECTION 7.** (1) The Foster Child Ombudsman Advisory Committee is established con-
32 sisting of five members appointed by the Governor and confirmed by the Senate under ORS
33 171.562 and 171.565.

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

38 (3) The members of the committee must:

39 (a) Be residents of this state;

40 (b) Include individuals who are or who represent current or former foster children, in-
41 cluding racial and ethnic minorities;

42 (c) Have knowledge and interest in the problems of foster children; and

43 (d) Be representative of all areas of this state and the demographics of groups served by
44 the Foster Child Ombudsman.

45 (4) The committee shall select one of its members as chairperson and another as vice

1 **chairperson, for such terms and with duties and powers necessary for the performance of**
2 **the functions of such offices as the committee determines.**

3 **(5) A majority of the members of the committee constitutes a quorum for the transaction**
4 **of business. Decisions may be made by a majority of the quorum.**

5 **(6) The committee shall meet at least once each month at a place, day and hour deter-**
6 **mined by the committee. The committee also shall meet at other times and places specified**
7 **by the call of the chairperson or of a majority of the members of the committee. The com-**
8 **mittee shall confer each month with the Foster Child Ombudsman.**

9 **(7) Members of the committee are not entitled to compensation or reimbursement for**
10 **expenses and serve as volunteers.**

11 **SECTION 8. The Foster Child Ombudsman Advisory Committee shall:**

12 **(1) Monitor the Office of the Foster Child Ombudsman.**

13 **(2) Advise the Governor and the Legislative Assembly on the Office of the Foster Child**
14 **Ombudsman.**

15 **(3) Nominate, after interviews and according to prescribed criteria, three persons to fill**
16 **the Foster Child Ombudsman position or to fill a vacancy in the position.**

17 **SECTION 9. ORS 418.201 is amended to read:**

18 418.201. It is the intent of the Legislative Assembly that each foster child have certain essential
19 rights, including but not limited to the following:

20 (1) To have the ability to make oral and written complaints about care, placement or services
21 that are unsatisfactory or inappropriate, and to be provided with information about a formal process
22 for making complaints without fear of retaliation, harassment or punishment.

23 (2) To be notified of, and provided with transportation to, court hearings and reviews by local
24 citizen review boards pertaining to the foster child's case when the matters to be considered or
25 decided upon at the hearings and reviews are appropriate for the foster child, taking into account
26 the age and developmental stage of the foster child.

27 (3) To be provided with written contact information of specific individuals whom the foster child
28 may contact regarding complaints, concerns or violations of rights, that is updated as necessary and
29 kept current.

30 (4) When a foster child is 14 years of age or older, to be provided with written information
31 within 60 days of the date of any placement or any change in placement, regarding:

32 (a) How to establish a bank account in the foster child's name as allowed under state law;

33 (b) How to acquire a driver license as allowed under state law;

34 (c) How to remain in foster care after reaching 18 years of age;

35 (d) The availability of a tuition and fee waiver for a current or former foster child under ORS
36 350.300;

37 (e) How to obtain a copy of the foster child's credit report, if any;

38 (f) How to obtain medical, dental, vision, mental health services or other treatment, including
39 services and treatments available without parental consent under state law; and

40 (g) A transition toolkit, including a comprehensive transition plan.

41 (5) With respect to a foster child's rights under the federal and state constitutions, laws, in-
42 cluding case law, rules and regulations:

43 (a) To receive a document setting forth such rights that is age-appropriate and developmentally
44 appropriate within 60 days of the date of any placement or any change in placement;

45 (b) To have a document setting forth such rights that is age-appropriate and developmentally

1 appropriate posted at the residences of all foster parents, child-caring agencies and independent
 2 resident facilities;

3 (c) To have an annual review of such rights that is age-appropriate and developmentally appro-
 4 priate while the foster child is in substitute care; and

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

6 (A) To receive a document setting forth such rights that is age-appropriate and developmentally
 7 appropriate; and

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

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

16 (7) To *[have]* **be informed about the Office of the Foster Child Ombudsman and have ac-**
 17 **cess to the services described in section 4 of this 2019 Act, including** a hotline phone number
 18 that is available to the foster child at all times for the purposes of enabling the foster child to make
 19 complaints and assert grievances regarding the foster child's care, safety or well-being.

20 **SECTION 10.** ORS 418.992 is amended to read:

21 418.992. (1) In addition to any other liability or penalty provided by law, the Director of Human
 22 Services may impose a civil penalty on a child-caring agency that is subject to ORS 418.205 to
 23 418.327, 418.470, 418.475 or 418.950 to 418.970 for any of the following:

24 (a) Violation of any of the terms or conditions of a license, certificate or other authorization
 25 issued under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970.

26 (b) Violation of any rule adopted by, or general order of, the Department of Human Services that
 27 pertains to a child-caring agency.

28 (c) Violation of any final order of the director that pertains specifically to the child-caring
 29 agency.

30 (d) Violation of the requirement to have a license, certificate or other authorization under ORS
 31 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970.

32 (2) The director shall impose a civil penalty not to exceed \$500, unless otherwise required by
 33 law, on any child-caring agency for falsifying records, reports, documents or financial statements or
 34 for causing another person to do so.

35 (3) The director shall impose a civil penalty of not less than \$250 nor more than \$500, unless
 36 otherwise required by law, on a child-caring facility that assumes care or custody of, or provides
 37 care or services to, a child knowing that the child's care needs exceed the license, certificate or
 38 authorization classification of the child-caring agency if the assumption of care or custody, or pro-
 39 vision of care or services, places that child's health, safety or welfare at risk.

40 (4) Unless the health, safety or welfare of a child is at risk, the director in every case shall
 41 prescribe a reasonable time for elimination of a violation:

42 (a) Not to exceed 45 days after first notice of a violation; or

43 (b) In cases where the violation requires more than 45 days to correct, such time as is specified
 44 in a plan of correction found acceptable by the director.

45 (5) A civil penalty imposed under this section may be remitted or reduced upon such terms and

1 conditions as the director considers proper and consistent with the public health and safety.

2 (6) The department shall adopt rules establishing objective criteria for the imposition and
3 amount of civil penalties under ORS 418.992 to 418.998.

4 (7) **Civil penalties recovered from any child-caring agency shall be deposited in the Office
5 of the Foster Child Ombudsman subaccount of the Office of Oregon Ombudsmen Account
6 established in section 2 of this 2019 Act.**

7
8 **FOSTER PARENT OMBUDSMAN**

9
10 **SECTION 11. (1) As used in this section:**

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

13 (b) **“Service provider” means an individual, entity, agency or program that provides in-
14 formation and services to foster parents, either directly or indirectly, including but not lim-
15 ited to:**

16 (A) **Information and assistance in accessing parental and community support, services
17 and resources;**

18 (B) **Respite care;**

19 (C) **Training; and**

20 (D) **Coaching, mentoring or counseling.**

21 (2) **The Office of the Foster Parent Ombudsman is established. The Governor shall ap-
22 point the Foster Parent Ombudsman in consultation with the Foster Parent Ombudsman
23 Advisory Committee established under section 14 of this 2019 Act. The ombudsman shall be
24 appointed for a four-year term. The Governor shall fill a vacancy in the position no later
25 than 60 days after the vacancy occurs, in the same manner as the appointment is made.**

26 (3) **The Foster Parent Ombudsman shall:**

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

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

32 (c) **Assist foster parents in identifying and accessing resources in the community and in
33 connecting with local service providers;**

34 (d) **Encourage foster parents to participate in general studies, conferences, inquiries or
35 meetings related to foster care in this state;**

36 (e) **Organize or collaborate with others in organizing general studies, conferences, in-
37 quiries or meetings to develop recommendations for improving the foster care system in this
38 state;**

39 (f) **Monitor the development and implementation of federal, state and local laws and pol-
40 icies that impact the foster care system in this state;**

41 (g) **Collect and compile data necessary to prepare the report submitted to the Governor
42 under ORS 182.500 and provide a copy of the report to the Governor’s Child Foster Care
43 Advisory Commission established in ORS 418.041; and**

44 (h) **Provide information to state and local agencies about problems identified and reforms
45 undertaken in the foster care system in this state and work closely with associations and**

1 citizen groups and with the state protection and advocacy system under ORS 192.517.

2 (4)(a) The Foster Parent Ombudsman shall:

3 (A) Maintain the hotline telephone number for foster parents required by ORS 418.648
4 (12); and

5 (B) In consultation with the Foster Parent Ombudsman Advisory Committee, establish
6 procedures for a foster parent to make a complaint about the foster parent's interaction
7 with individuals or agencies involved in the foster care system.

8 (b)(A) The ombudsman and each designee appointed under section 12 of this 2019 Act
9 shall have access to records of any public agency, to the extent permitted by state and fed-
10 eral law, that are necessary to carry out the duties of the ombudsman. The provisions of
11 ORS 192.553 to 192.581 are not intended to limit the access of the ombudsman to the records
12 of a foster parent or foster child, including medical records of the foster child as authorized
13 by the foster child or an individual legally authorized to act on behalf of the foster child, if
14 needed to investigate a complaint.

15 (B) The ombudsman and the Department of Human Services shall enter into a
16 confidentiality agreement permitting the ombudsman and each designee to have access to
17 electronic records of the department that are necessary to carry out the duties of the om-
18 budsman, if permitted by state and federal law. The agreement must ensure that records
19 obtained by the ombudsman from the department that are confidential, privileged or other-
20 wise protected from disclosure are not further disclosed, except as permitted by state and
21 federal law.

22 (c) The ombudsman or a designee shall report to a foster parent the findings of the om-
23 budsman or designee in the investigation of the complaint and may make recommendations.
24 If appropriate, the ombudsman or designee shall attempt to resolve the complaint using in-
25 formal mediation or conflict resolution techniques.

26 (5) A foster parent who makes a complaint to the Foster Parent Ombudsman in good
27 faith under this section, or who participates in an investigation of a complaint:

28 (a) May not be subjected to a penalty, sanction or restriction, or be denied any right,
29 privilege or benefit, on account of making the complaint or participating in the investigation
30 of the complaint; and

31 (b) Shall have immunity from any civil or criminal liability that might otherwise be in-
32 curred or imposed on account of making the complaint or participating in the investigation
33 of the complaint.

34 (6) All state agencies shall cooperate with and assist the Foster Parent Ombudsman in
35 the performance of the ombudsman's duties and functions.

36 **SECTION 12.** (1) The Foster Parent Ombudsman may appoint designees to serve as rep-
37 resentatives of the ombudsman in local communities. The ombudsman shall regularly moni-
38 tor the functions of designees.

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

42 (a) The Department of Human Services.

43 (b) Elected officials.

44 (c) The Oregon Health Authority.

45 (d) Foster care providers.

1 (e) Court appointed special advocates.

2 (f) Local citizen review boards.

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

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

7 (5) The qualifications of designees shall include experience working with foster care pro-
8 viders and the ability to communicate well, to understand laws, rules and regulations and to
9 be assertive and objective.

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

12 **SECTION 13.** The Foster Parent Ombudsman shall establish procedures to maintain the
13 confidentiality of the records and files of foster parents. The procedures must meet the fol-
14 lowing requirements:

15 (1) The Foster Parent Ombudsman or designee may not disclose, except to law enforce-
16 ment and state agencies, the identity of any foster parent, or individual acting on behalf of
17 a foster parent, without written consent signed by the foster parent, the legal representative
18 of the foster parent or an individual legally authorized to act on behalf of the foster parent.
19 The written consent must specify to whom the disclosure may be made.

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

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

27 **SECTION 14.** (1) The Foster Parent Ombudsman Advisory Committee is established con-
28 sisting of five members appointed by the Governor and confirmed by the Senate under ORS
29 171.562 and 171.565.

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

34 (3) The members of the committee must:

35 (a) Be residents of this state;

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

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

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

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

44 (5) A majority of the members of the committee constitutes a quorum for the transaction
45 of business. Decisions may be made by a majority of the quorum.

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

5 **(7) Members of the committee are not entitled to compensation or reimbursement for**
 6 **expenses and serve as volunteers.**

7 **SECTION 15. The Foster Parent Ombudsman Advisory Committee shall:**

8 **(1) Monitor the Office of the Foster Parent Ombudsman.**

9 **(2) Advise the Governor and the Legislative Assembly on the Office of the Foster Parent**
 10 **Ombudsman.**

11 **(3) Nominate, after interviews and according to prescribed criteria, three persons to fill**
 12 **the Foster Parent Ombudsman position or to fill a vacancy in the position.**

13 **SECTION 16. ORS 418.648 is amended to read:**

14 418.648. A foster parent has the right to:

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

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

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

21 (4) Be informed of any condition that relates solely to a foster child placed in the home of the
 22 foster parent that may jeopardize the health or safety of the foster parent or other members of the
 23 home or alter the manner in which foster care should be provided to the foster child. The informa-
 24 tion shall include complete access to written reports, psychological evaluations and diagnoses that
 25 relate solely to a foster child placed in the home of the foster parent provided that confidential in-
 26 formation given to a foster parent must be kept confidential by the foster parent, except as neces-
 27 sary to promote or to protect the health and welfare of the foster child and the community.

28 (5) Have input into a permanency plan for a foster child placed in the home of the foster parent.

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

31 (7) Be informed of all policies and procedures of the department that relate to the role of the
 32 foster parent.

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

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

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

39 (11) Be notified of the foster parent's right to limited participation in proceedings in the juvenile
 40 court and provided with an explanation of that right.

41 **(12) Have a hotline telephone number that is available to the foster parent at all times**
 42 **for the purpose of enabling the foster parent to make complaints and assert grievances re-**
 43 **garding the foster parent's duties.**

44 **(13) Be provided with written contact information, updated as necessary and kept cur-**
 45 **rent, for specific individuals whom the foster parent may contact regarding complaints,**

1 **concerns or violations of rights.**

2 (14) **Be informed about the Office of the Foster Parent Ombudsman and have access to**
3 **the services described in section 11 of this 2019 Act.**

4
5 **MANDATORY REPORTING**

6
7 **SECTION 17.** ORS 419B.005 is amended to read:

8 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

9 (1)(a) "Abuse" means:

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

13 (B) Any mental injury to a child, which shall include only observable and substantial impairment
14 of the child's mental or psychological ability to function caused by cruelty to the child, with due
15 regard to the culture of the child.

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

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

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

20 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
21 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
22 in the performing for people to observe or the photographing, filming, tape recording or other ex-
23 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
24 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
25 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
26 which is designed to serve educational or other legitimate purposes; and

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

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

33 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
34 to the child's health or welfare.

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

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

38 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
39 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
40 stantial risk of harm to the child's health or safety.

41 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
42 conditions described in paragraph (a) of this subsection.

43 (2) "Child" means an unmarried person who:

44 (a) Is under 18 years of age; or

45 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring

- 1 agency as that term is defined in ORS 418.205.
- 2 (3) “Higher education institution” means:
- 3 (a) A community college as defined in ORS 341.005;
- 4 (b) A public university listed in ORS 352.002;
- 5 (c) The Oregon Health and Science University; and
- 6 (d) A private institution of higher education located in Oregon.
- 7 (4) “Law enforcement agency” means:
- 8 (a) A city or municipal police department.
- 9 (b) A county sheriff’s office.
- 10 (c) The Oregon State Police.
- 11 (d) A police department established by a university under ORS 352.121 or 353.125.
- 12 (e) A county juvenile department.
- 13 (5) “Public or private official” means:
- 14 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 15 including any intern or resident.
- 16 (b) Dentist.
- 17 (c) School employee, including an employee of a higher education institution.
- 18 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
- 19 or employee of an in-home health service.
- 20 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 21 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
- 22 health department, a community mental health program, a community developmental disabilities
- 23 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
- 24 or an alcohol and drug treatment program.
- 25 (f) Peace officer.
- 26 (g) Psychologist.
- 27 (h) Member of the clergy.
- 28 (i) Regulated social worker.
- 29 (j) Optometrist.
- 30 (k) Chiropractor.
- 31 (L) Certified provider of foster care, or an employee thereof.
- 32 (m) Attorney.
- 33 (n) Licensed professional counselor.
- 34 (o) Licensed marriage and family therapist.
- 35 (p) Firefighter or emergency medical services provider.
- 36 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 37 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 38 (s) Member of the Legislative Assembly.
- 39 (t) Physical, speech or occupational therapist.
- 40 (u) Audiologist.
- 41 (v) Speech-language pathologist.
- 42 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 43 gations or discipline by the commission.
- 44 (x) Pharmacist.
- 45 (y) An operator of a preschool recorded program under ORS 329A.255.

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

2 (aa) Employee of a private agency or organization facilitating the provision of respite services,
3 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
4 109.056.

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

6 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
7 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
8 vision or auspices of religious, public or private educational systems or community service organ-
9 izations; and

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

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

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

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

17 **(ff) The Foster Child Ombudsman or a designee appointed under section 5 of this 2019**
18 **Act.**

19 **(gg) The Foster Parent Ombudsman or a designee appointed under section 12 of this 2019**
20 **Act.**

21 **SECTION 18.** ORS 419B.005, as amended by section 21, chapter 75, Oregon Laws 2018, is
22 amended to read:

23 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

24 (1)(a) "Abuse" means:

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

28 (B) Any mental injury to a child, which shall include only observable and substantial impairment
29 of the child's mental or psychological ability to function caused by cruelty to the child, with due
30 regard to the culture of the child.

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

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

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

35 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
36 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
37 in the performing for people to observe or the photographing, filming, tape recording or other ex-
38 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
39 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
40 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
41 which is designed to serve educational or other legitimate purposes; and

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

45 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to

1 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
2 welfare of the child.

3 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
4 to the child's health or welfare.

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

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

8 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
9 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
10 stantial risk of harm to the child's health or safety.

11 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
12 conditions described in paragraph (a) of this subsection.

13 (2) "Child" means an unmarried person who:

14 (a) Is under 18 years of age; or

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

17 (3) "Higher education institution" means:

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

19 (b) A public university listed in ORS 352.002;

20 (c) The Oregon Health and Science University; and

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

22 (4) "Law enforcement agency" means:

23 (a) A city or municipal police department.

24 (b) A county sheriff's office.

25 (c) The Oregon State Police.

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

27 (e) A county juvenile department.

28 (5) "Public or private official" means:

29 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
30 including any intern or resident.

31 (b) Dentist.

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

33 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
34 or employee of an in-home health service.

35 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
36 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
37 health department, a community mental health program, a community developmental disabilities
38 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
39 or an alcohol and drug treatment program.

40 (f) Peace officer.

41 (g) Psychologist.

42 (h) Member of the clergy.

43 (i) Regulated social worker.

44 (j) Optometrist.

45 (k) Chiropractor.

- 1 (L) Certified provider of foster care, or an employee thereof.
- 2 (m) Attorney.
- 3 (n) Licensed professional counselor.
- 4 (o) Licensed marriage and family therapist.
- 5 (p) Firefighter or emergency medical services provider.
- 6 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 7 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 8 (s) Member of the Legislative Assembly.
- 9 (t) Physical, speech or occupational therapist.
- 10 (u) Audiologist.
- 11 (v) Speech-language pathologist.
- 12 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
13 gations or discipline by the commission.
- 14 (x) Pharmacist.
- 15 (y) An operator of a preschool recorded program under ORS 329A.255.
- 16 (z) An operator of a school-age recorded program under ORS 329A.257.
- 17 (aa) Employee of a private agency or organization facilitating the provision of respite services,
18 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
19 109.056.
- 20 (bb) Employee of a public or private organization providing child-related services or activities:
21 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
22 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
23 vision or auspices of religious, public or private educational systems or community service organ-
24 izations; and
25 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
26 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
27 ficking.
- 28 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
29 if compensated and if the athlete is a child.
- 30 (dd) Personal support worker, as defined in ORS 410.600.
- 31 (ee) Home care worker, as defined in ORS 410.600.
- 32 **(ff) The Foster Child Ombudsman or a designee appointed under section 5 of this 2019**
33 **Act.**
- 34 **(gg) The Foster Parent Ombudsman or a designee appointed under section 12 of this 2019**
35 **Act.**

36
37 **OFFICE OF THE LONG TERM CARE OMBUDSMAN**
38

39 **SECTION 19.** ORS 441.403 is amended to read:

40 441.403. (1) The Office of the Long Term Care Ombudsman is established. The Long Term Care
41 Ombudsman shall function separately and independently from any other state agency. The Governor
42 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees
43 nominated by the [*Residential Ombudsman and Public Guardianship Advisory Board*] **Long Term**
44 **Care Ombudsman Advisory Committee** established under ORS 441.416. The appointment of the
45 Long Term Care Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565. A

1 vacancy **in the position** shall be filled [*within*] **no later than** 60 days **after the vacancy occurs**,
 2 in the same manner as an appointment is made.

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

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

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

15 **SECTION 20.** ORS 441.406, as amended by section 17, chapter 61, Oregon Laws 2018, is
 16 amended to read:

17 441.406. (1) The **Office of the** Long Term Care Ombudsman shall carry out the following duties:

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

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

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

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

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

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

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

36 (h) 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) 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) Specify qualifications and duties of designees.

43 (k) Adopt rules necessary for carrying out ORS 441.402 to [~~441.414~~] **441.419**, after consultation
 44 with the [*Residential Ombudsman and Public Guardianship Advisory Board*] **Long Term Care**
 45 **Ombudsman Advisory Committee**.

1 **(L) Collect and compile data necessary to prepare the report submitted to the Governor**
 2 **under ORS 182.500.**

3 [(L)] (m) Provide periodically, or at least annually, a report to the [Governor, authority,] de-
 4 partment and **the** Legislative Assembly.

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

6 [(n) Advise and support the Oregon Public Guardian and Conservator appointed under ORS
 7 125.678.]

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

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

13 **SECTION 21.** ORS 441.408 is amended to read:

14 441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
 15 into long term care facilities at any time considered necessary and reasonable by the ombudsman
 16 or the designee for the purpose of:

- 17 (a) Investigating and resolving complaints made by residents or made on their behalf;
- 18 (b) Interviewing residents, with their consent, in private;
- 19 (c) Offering the services of the ombudsman or the designee to any resident, in private;
- 20 (d) Interviewing employees or agents of the facility;
- 21 (e) Consulting regularly with the facility administration; and
- 22 (f) Providing services authorized by law or by rule.

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

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

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

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

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

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

3 **SECTION 22.** ORS 441.411 is amended to read:

4 441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each long term
 5 care facility in this state a written notice describing the procedures to follow in making a complaint,
 6 including the address and telephone number of the ombudsman and local designee, if any, and a
 7 poster describing the Long Term Care Ombudsman Program and providing contact information.

8 (2) The administrator of each long term care facility shall post the written notice and poster
 9 required by this section in conspicuous places in the facility in accordance with procedures provided
 10 by the **Long Term Care** Ombudsman and shall give the written notice to each resident and legally
 11 appointed guardian, if any.

12 **SECTION 23.** ORS 441.413 is amended to read:

13 441.413. (1) The Long Term Care Ombudsman shall appoint designees in consultation with local
 14 screening committees that may consist of but not be limited to persons representing:

- 15 (a) The area agency, as defined in ORS 410.040.
- 16 (b) The local office of the Department of Human Services.
- 17 (c) The local health department.
- 18 (d) Senior citizens groups in the area.
- 19 (e) Local elected officials.

20 (2) To be appointed as a designee, a person must complete an initial training, as prescribed by
 21 the Long Term Care Ombudsman by rule, and attend quarterly training sessions that are approved
 22 by the ombudsman and that shall be coordinated and funded by the Department of Human Services
 23 [*and the Oregon Health Authority*], subject to the availability of funds. Local screening committees
 24 shall be appointed by and serve at the pleasure of the ombudsman.

25 (3) Designees must sign a contract with the [*state*] **Office of the Long Term Care Ombudsman**
 26 that outlines the scope of their duties. In districts where a designee is an employee or agent of a
 27 local entity, a three-party contract shall be executed. Violation of the contract is cause for the
 28 termination of the appointment. A directory of all designees shall be maintained in the Office of the
 29 Long Term Care Ombudsman.

30 (4) The qualifications of designees shall include experience with long term care facilities or
 31 residents or potential residents of long term care facilities, and the ability to communicate well, to
 32 understand laws, rules and regulations, and to be assertive, yet objective.

33 (5) Applicants who have experience in either social service, [*mental health, developmental disa-*
 34 *bility services,*] gerontology, nursing or paralegal work shall be given preference in the appointment
 35 of designees.

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

- 38 (a) Promote rapport and trust between the residents and staff of the long term care facilities
 39 and Long Term Care Ombudsman;
- 40 (b) Assist residents with participating more actively in determining the delivery of services at
 41 the facilities;
- 42 (c) Serve as an educational resource;
- 43 (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate
 44 agency; and
- 45 (e) Ensure equitable resolution of problems.

(7) The duties of the designees are to:

(a) Visit each assigned long term care facility on a regular basis:

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

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

(C) Visit individual residents and resident councils.

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

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

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

(e) Periodically review the rights prescribed in ORS 441.605, 441.610 and 441.612, and any other applicable rights to services, with residents, families, guardians, administrators and staff of long term care facilities.

(f) Perform other related duties as specified.

SECTION 24. ORS 441.416 is amended to read:

441.416. (1) There is established a [*Residential Ombudsman and Public Guardianship Advisory Board of 11 members to be appointed in the following manner:*]

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

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

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

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

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

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

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

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

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

(4) The members of the [*board*] **committee** must be residents of this state who are broadly representative, to the extent possible, of persons [*residing in residential facilities as defined in ORS 443.380 or long term care facilities*] **over 60 years of age**, including members of racial and ethnic minorities, who have knowledge and interest in the problems of [*persons residing in residential facilities*] **seniors**, and who are representative of all areas of this state [*and the demographics of groups served by the Long Term Care Ombudsman*].

(5) A member of the [*board*] **committee** may not have a financial or fiduciary interest in [*residential facilities as defined in ORS 443.380,*] long term care facilities or service providers, or involvement in the licensing or certification of [*residential facilities,*] long term care facilities or service providers.

(6) The [*board*] **committee** shall select one of its members as chairperson and another as vice

1 chairperson, for such terms and with duties and powers necessary for the performance of the func-
2 tions of such offices as the [board] **committee** determines.

3 (7) A majority of the members of the [board] **committee** constitutes a quorum for the trans-
4 action of business. Decisions may be made by a majority of the quorum.

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

10 (9) A member of the [board] **committee** is **not** entitled to compensation [*and expenses as pro-
11 vided in ORS 292.495*] **or reimbursement for expenses and services as a volunteer on the
12 committee**.

13 **SECTION 25.** ORS 441.417 is amended to read:

14 441.417. The [*Residential Ombudsman and Public Guardianship Advisory Board*] **Long Term
15 Care Ombudsman Advisory Committee** shall:

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

17 (2) Advise the Governor and the Legislative Assembly on the **Office of the** Long Term Care
18 Ombudsman [*Program*].

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

21 **SECTION 26.** ORS 441.418 is amended to read:

22 441.418. (1) A [*residential facility as defined in ORS 443.380 or a*] long term care facility that files
23 a complaint against a designee appointed under ORS 441.413 and objects to the action of the Long
24 Term Care Ombudsman in resolving the complaint may appeal the ombudsman's action to a panel
25 of the [*Residential Ombudsman and Public Guardianship Advisory Board*] **Long Term Care Om-
26 budsman Advisory Committee**.

27 (2) The [board] **committee** on its own motion may review any action by the **Long Term Care
28 Ombudsman** appealable under this section. The review shall provide an opportunity for written and
29 oral presentation by the [*residential facility as defined in ORS 443.380 or a*] long term care facility
30 and the ombudsman. The [board] **committee** shall issue its findings and any instructions to the
31 ombudsman in written form consistent with the federal Older Americans Act or other applicable
32 federal law.

33 (3) If the [board] **committee** disagrees with the action of the **Long Term Care** Ombudsman, the
34 [board] **committee** may refer the resolution back to the ombudsman with instructions consistent
35 with the federal Older Americans Act or other applicable federal law to conform the ombudsman's
36 action in the matter to the recommendations of the [board] **committee**.

37 **SECTION 27.** ORS 410.550 is amended to read:

38 410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is
39 created, to consist of [12] **13** members. Appointed members shall be residents of [*the State of
40 Oregon*] **this state** and representative of the geographic locations of all long term care facilities and
41 [*community-based care*] **residential** facilities in this state. The members shall include:

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

43 (b) **The Residential Facilities Ombudsman, who shall serve as a standing member of the
44 committee;**

45 [(b)] (c) A representative of the Governor's Commission on Senior Services, to be appointed by

1 the commission;

2 [(c)] (d) A representative of the Oregon Disabilities Commission, to be appointed by the com-
3 mission;

4 [(d)] (e) A representative of the Oregon Association of Area Agencies on Aging and Disabilities,
5 to be appointed by the Governor;

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

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

11 [(g)] (h) [*Two consumers of residential or long term care facilities*] **A resident of a long term**
12 **care facility**, as defined in ORS 441.402 [*and 442.015, or community-based care facilities or family*
13 *members of such residents*], **or a family member of a resident**, to be appointed by the Speaker of
14 the House of Representatives;

15 **(i) A resident of a residential facility, as defined in ORS 443.380, or a family member of**
16 **a resident, to be appointed by the Speaker of the House of Representatives;**

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

20 [(i)] (k) A representative of an assisted living facility or a residential care facility, to be ap-
21 pointed by the President of the Senate;

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

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

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

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

30 (4) The council shall:

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

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

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

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

39 **SECTION 28. All moneys in the Long Term Care Ombudsman Account established in ORS**
40 **441.419 are transferred to the Office of Oregon Ombudsmen Account established in section**
41 **2 of this 2019 Act. The Office of Oregon Ombudsmen shall allocate the moneys to the sub-**
42 **accounts of the Office of the Long Term Care Ombudsman and the Office of the Residential**
43 **Facilities Ombudsman as necessary for the Office of the Long Term Care Ombudsman and**
44 **the Office of the Residential Facilities Ombudsman to carry out their respective duties.**

45

RESIDENTIAL FACILITIES OMBUDSMAN

SECTION 29. ORS 443.382 is amended to read:

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

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

(1) The Office of the Residential Facilities Ombudsman is established in the Office of Oregon Ombudsmen. The Governor shall appoint the Residential Facilities Ombudsman for a four-year term from a list of three nominees nominated by the Residential Facilities Ombudsman Advisory Committee established under section 30 of this 2019 Act. A vacancy in the position shall be filled no later than 60 days after the vacancy occurs, in the same manner as an appointment is made.

(2) The Residential Facilities Ombudsman may be removed for just cause, upon recommendation to the Governor by the Residential Facilities Ombudsman Advisory Committee.

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

(a) The fields of mental health or intellectual or developmental disabilities and behavioral health care;

(b) Working with community programs;

(c) Residential facility regulatory and policy issues;

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

(e) Administration and management.

[(3)] **(4) The Residential Facilities Ombudsman or a designee appointed under ORS 443.386 shall:**

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

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

(c) Widely publicize the [Residential Facilities] ombudsman's services, purpose and mode of operation.

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

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

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

1 (g) Ensure that residents have regular, timely, private and unimpeded access to the [*Residential*
 2 *Facilities*] ombudsman’s services and that a resident or an individual acting on behalf of a resident
 3 who files a complaint receives a timely response to the complaint from the ombudsman or a
 4 designee.

5 (h) Represent the interests of residents before government agencies and seek administrative, le-
 6 gal or other appropriate remedies to protect the health, safety, welfare and rights of residents.

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

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

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

14 (L) Train designees.

15 (m) Promote the development of organizations to advocate on behalf of residents of residential
 16 facilities.

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

19 (o) Assist residents and individuals acting on their behalf in locating and accessing resources
 20 in the community and in connecting with local service providers.

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

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

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

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

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

32 **(u) Work with residents to identify and recommend processes for making complaints**
 33 **about service providers and entities.**

34 [(u)] (v) Adopt rules necessary for carrying out ORS 443.380 to 443.394, in accordance with ORS
 35 chapter 183, in consultation with the [*Long Term Care Ombudsman and the Residential Ombudsman*
 36 *and Public Guardianship Advisory Board*] **Residential Facilities Ombudsman Advisory Commit-**
 37 **tee.**

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

43 **(6) The authority and the department shall provide the Residential Facilities Ombudsman**
 44 **and the designees monthly, in a format specified by the ombudsman, demographic informa-**
 45 **tion about each resident in the residential facilities for which the ombudsman or designee**

1 has responsibilities under this section.

2 (7) All state agencies and service providers shall cooperate with and assist the Residen-
3 tial Facilities Ombudsman and designees in the performance of the ombudsman's duties and
4 functions.

5 **SECTION 30.** (1) The Residential Facilities Ombudsman Advisory Committee is estab-
6 lished consisting of five members appointed by the Governor, one of whom must be selected
7 by the Governor from a list of four names submitted by an organization for persons with
8 mental illness and one of whom must be selected by the Governor from a list of four names
9 submitted by the Oregon Council on Developmental Disabilities. Members are subject to
10 confirmation by the Senate under ORS 171.562 and 171.565.

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

15 (3) The members of the committee must be residents of this state who are broadly rep-
16 resentative of persons residing in residential facilities, including members of racial and eth-
17 nic minorities, who have knowledge and interest in the problems of individuals residing in
18 residential facilities and who are representative of all areas of this state and the demo-
19 graphics of groups served by the Residential Facilities Ombudsman.

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

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

26 (6) A majority of the members of the committee constitutes a quorum for the transaction
27 of business. Decisions may be made by a majority of the quorum.

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

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

34 **SECTION 31.** The Residential Facilities Ombudsman Advisory Committee shall:

35 (1) Monitor the Office of the Residential Facilities Ombudsman.

36 (2) Advise the Governor and the Legislative Assembly on the Office of the Residential
37 Facilities Ombudsman.

38 (3) Nominate, after interviews and according to prescribed criteria, three persons to fill
39 the Residential Facilities Ombudsman position or to fill a vacancy in the position.

40 **SECTION 32.** The Residential Facilities Ombudsman shall establish procedures to main-
41 tain the confidentiality of the records and files of residents of residential facilities. These
42 procedures must meet the following requirements:

43 (1) The ombudsman or a designee may not disclose the identity of any resident unless the
44 complainant or the resident, or the legal representative of either, consents in writing to the
45 disclosure and specifies to whom the disclosure may be made.

1 (2) The identity of any complainant or resident on whose behalf a complaint is made, or
 2 individual providing information on behalf of the complainant or the resident, shall be con-
 3 fidential. If the complaint becomes the subject of judicial proceedings, the investigative in-
 4 formation held by the ombudsman or the designee shall be disclosed for the purpose of the
 5 proceedings if requested by the court.

6 **SECTION 33.** (1) The Residential Facilities Ombudsman and each designee shall have the
 7 right of entry into residential facilities at any time considered necessary and reasonable by
 8 the ombudsman or the designee for the purpose of:

- 9 (a) Investigating and resolving complaints made by residents or made on their behalf;
- 10 (b) Interviewing residents, with their consent, in private;
- 11 (c) Offering the services of the ombudsman or the designee to any resident, in private;
- 12 (d) Interviewing employees or agents of the facility;
- 13 (e) Consulting regularly with the facility administration; and
- 14 (f) Providing services authorized by law or by rule.

15 (2)(a) The ombudsman shall have access to any resident’s records, and to records of any
 16 public agency necessary to the duties of the ombudsman, including records on reports of
 17 resident abuse made pursuant to ORS 124.050 to 124.095 and 441.630 to 441.680. The provisions
 18 of ORS 192.553 to 192.581 are not intended to limit the access of the ombudsman to medical
 19 records of residents of residential facilities. If necessary to investigate a complaint,
 20 designees shall have access to individual resident’s records, including medical records as
 21 authorized by the resident or the resident’s legal representative.

22 (b) If a resident’s legal representative denies access to the resident’s records by the
 23 ombudsman or a designee, the ombudsman shall have access to the records if the ombuds-
 24 man has reasonable cause to believe that the legal representative is not acting in the best
 25 interests of the resident.

26 (3) The ombudsman shall enter into confidentiality agreements with the Department of
 27 Human Services and with the Oregon Health Authority permitting the ombudsman to have
 28 access to electronic records of the department and the authority that are necessary to carry
 29 out the duties of the ombudsman. The agreement must ensure that records obtained by the
 30 ombudsman from the department or the authority that are confidential, privileged or other-
 31 wise protected from disclosure are not further disclosed, except as permitted by state and
 32 federal law.

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

36 (5) The ombudsman or the designee must show identification to the person in charge of
 37 the facility. The resident shall have the right to refuse to communicate with the ombudsman
 38 or the designee. The refusal shall be made directly to the ombudsman or the designee and
 39 not through an intermediary.

40 (6) The resident shall have the right to participate in planning any course of action to
 41 be taken on behalf of the resident by the ombudsman or the designee.

42 **SECTION 34.** (1) Following an investigation, the Residential Facilities Ombudsman or the
 43 designee shall report opinions or recommendations to the party or parties affected and, if
 44 appropriate, shall attempt to resolve the complaint using informal techniques of mediation,
 45 conciliation and persuasion. Complaints of conditions adversely affecting residents of resi-

1 **dential facilities, or complaints of conditions threatening the safety or well-being of residents**
 2 **that cannot be resolved in the manner described in this section, shall be referred to an ap-**
 3 **propriate state agency.**

4 **(2) Programs that promote the safety or emotional or physical well-being of residents of**
 5 **residential facilities shall be promoted and publicized by the ombudsman and the designees.**

6 **SECTION 35. (1) Any employee or agent of a residential facility acting in good faith in**
 7 **discussing resident care pursuant to section 33 of this 2019 Act shall have immunity from**
 8 **any civil liability that might otherwise be incurred or imposed with respect to the making**
 9 **of such report.**

10 **(2) Any employee or agent who makes a report pursuant to section 33 of this 2019 Act**
 11 **may not be subjected to any retaliation by any official or other employee of a residential fa-**
 12 **ility solely for making a report, including but not limited to restriction of otherwise lawful**
 13 **access to the facility or to any resident of the facility, or, if an employee, to dismissal or**
 14 **harassment.**

15 **(3) The Residential Facilities Ombudsman or the designee acting in good faith in dis-**
 16 **cussing resident care pursuant to section 33 of this 2019 Act shall have immunity from any**
 17 **civil liability that might otherwise be incurred or imposed with respect to the discussion.**

18 **SECTION 36. (1) A residential facility as defined in ORS 443.380 that files a complaint**
 19 **against a designee appointed under ORS 443.386 and objects to the action of the Residential**
 20 **Facilities Ombudsman in resolving the complaint may appeal the ombudsman's action to a**
 21 **panel of the Residential Facilities Ombudsman Advisory Committee.**

22 **(2) The committee on its own motion may review any action by the ombudsman**
 23 **appealable under this section. The review shall provide an opportunity for written and oral**
 24 **presentation by the residential facility as defined in ORS 443.380 and the ombudsman. The**
 25 **committee shall issue its findings and any instructions to the ombudsman in written form**
 26 **consistent with the federal Older Americans Act or other applicable federal law.**

27 **(3) If the committee disagrees with the action of the ombudsman, the committee may**
 28 **refer the resolution back to the ombudsman with instructions consistent with the federal**
 29 **Older Americans Act or other applicable federal law to conform the ombudsman's action in**
 30 **the matter to the recommendations of the committee.**

31 **SECTION 37. ORS 443.386 is amended to read:**

32 **443.386. (1) The Residential Facilities Ombudsman [shall] may, in consultation with the [Long**
 33 **Term Care] Residential Facilities Ombudsman Advisory Committee, appoint designees to serve**
 34 **as representatives of the ombudsman in local communities. The ombudsman shall regularly monitor**
 35 **the functions of designees.**

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

37 **(3) To be appointed as a designee, a person must complete an initial training prescribed by the**
 38 **Residential Facilities Ombudsman by rule and attend required continuing educational training ses-**
 39 **sions that are approved by the ombudsman.**

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

43 **SECTION 38. ORS 443.396 is amended to read:**

44 **443.396. The Residential Facilities Ombudsman appointed under ORS 443.382 may solicit and**
 45 **accept gifts, grants and donations from public and private sources for the purpose of carrying out**

1 ORS 443.380 to 443.394, and the moneys shall be deposited in the [*Long Term Care Ombudsman*
 2 *Account established under ORS 441.419*] **Office of Oregon Ombudsmen Account established in**
 3 **section 2 of this 2019 Act.**

4 **SECTION 39.** ORS 443.455 is amended to read:

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

8 (2)(a) The Director of Human Services shall impose penalties on residential care facilities pur-
 9 suant to ORS 441.731.

10 (b) The director shall by rule prescribe a schedule of penalties for residential training facilities
 11 and residential training homes that are not in compliance with ORS 443.400 to 443.455.

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

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

21 (a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

22 (b) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree
 23 as defined in ORS 163.365 and rape in the third degree as defined in ORS 163.355.

24 (c) "Serious injury" means physical injury that creates a substantial risk of death or that causes
 25 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
 26 ment of the function of any bodily organ.

27 (d) "Sexual abuse" means any form of sexual contact between an employee of a residential fa-
 28 cility or a person providing services in the residential facility and a resident of that facility, in-
 29 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual
 30 harassment.

31 (5) Civil penalties recovered from a residential training facility, residential training home, resi-
 32 dential treatment facility or residential treatment home shall be deposited in the [*Long Term Care*
 33 *Ombudsman*] **Office of the Residential Facilities Ombudsman subaccount in the Office of**
 34 **Oregon Ombudsmen Account established in [ORS 441.419] section 2 of this 2019 Act.**

35 **SECTION 40.** ORS 443.447 is amended to read:

36 443.447. (1) The Quality Measurement Council is established in the Department of Human Ser-
 37 vices to prescribe how the department shall implement the Residential Care Quality Measurement
 38 Program established under ORS 443.446.

39 (2) The council consists of eight members, appointed by the Governor, as follows:

40 (a) One individual representing the Oregon Patient Safety Commission;

41 (b) One individual representing residential care facilities;

42 (c) One consumer representative from an Alzheimer's advocacy organization;

43 (d) One licensed health care practitioner with experience in geriatrics;

44 (e) Two individuals associated with an academic institution who have expertise in research us-
 45 ing data and analytics and in community-based care and quality reporting;

1 (f) The [*Long Term Care*] **Residential Facilities** Ombudsman or a designee of the [*Long Term*
2 *Care*] **Residential Facilities** Ombudsman; and

3 (g) One individual representing the department.

4 (3)(a) On and after January 1, 2022, the council may update by rule the quality metrics to be
5 reported by residential care facilities under ORS 443.446.

6 (b) In developing quality metrics the council shall consider whether the data that must be re-
7 ported reflect and promote quality care and whether reporting the data is unnecessarily burdensome
8 on residential care facilities.

9 **SECTION 41.** ORS 443.825 is amended to read:

10 443.825. All penalties recovered under ORS 443.790 to 443.815 shall be deposited[:]

11 [(1) *In the Quality Care Fund established in ORS 443.001 if paid by an adult foster home licensed*
12 *to provide residential care to persons with physical disabilities.*]

13 [(2) *In the Long Term Care Ombudsman Account established in ORS 441.419 if paid by an adult*
14 *foster home licensed to provide care to persons with mental illness or developmental disabilities]* **in the**
15 **Residential Facilities Ombudsman subaccount in the Office of Oregon Ombudsmen Account**
16 **established in section 2 of this 2019 Act.**

17 **SECTION 42.** ORS 443.878 is amended to read:

18 443.878. (1) As used in this section:

19 (a) “Elderly person” means a person who is 65 years of age or older;

20 (b) “Person with a disability” has the meaning given that term in ORS 410.040; and

21 (c) “Psychotropic medication” has the meaning given that term in ORS 418.517.

22 (2) The Department of Human Services, in collaboration with the State Board of Pharmacy, the
23 Oregon Medical Board, the Oregon State Board of Nursing, **the Residential Facilities Ombudsman**
24 and the Long Term Care Ombudsman, shall adopt rules related to the prescription of a psychotropic
25 medication to an elderly person or a person with a disability who resides in:

26 (a) An adult foster home, as defined in ORS 443.705;

27 (b) A residential care facility, as defined in ORS 443.400; or

28 (c) A long term care facility, as defined in ORS 442.015.

29 (3) The requirements of this section do not apply to an elderly person or person with a disability
30 in a hospice program, as defined in ORS 443.850.

31 (4) The rules adopted under subsection (2) of this section must include, but are not limited to,
32 requirements that:

33 (a) If a prescription of psychotropic medication is written by a licensed health care practitioner
34 other than the primary care provider or mental health care provider, or other licensed health care
35 practitioner designated by the department, of the elderly person or person with a disability, the
36 prescription must be reviewed by the primary care provider or mental health care provider, or other
37 licensed health care practitioner designated by the department, of the elderly person or person with
38 a disability to:

39 (A) Limit the adverse side effects of the psychotropic medication; and

40 (B) Ensure that the psychotropic medication is prescribed in the lowest possible effective
41 dosage;

42 (b) A licensed health care practitioner other than the primary care provider or mental health
43 care provider, or other licensed health care practitioner designated by the department, of the elderly
44 person or person with a disability who prescribes a psychotropic medication notify the primary care
45 provider or mental health care provider, or other licensed health care practitioner designated by the

1 department, of the elderly person or person with a disability of the prescription not later than 24
 2 hours after issuing the prescription;

3 (c) Psychotropic medication prescribed by a licensed health care practitioner other than the
 4 primary care provider or mental health care provider, or other licensed health care practitioner
 5 designated by the department, of the elderly person or person with a disability may be in an amount
 6 sufficient for a seven-day supply; and

7 (d) The facility or home in which the elderly person or person with a disability resides demon-
 8 strates that:

9 (A) A person-centered assessment has been performed for the elderly person or person with a
 10 disability; and

11 (B) Based on the findings of the assessment, the best course of treatment, including the use of
 12 nonpharmacological interventions, psychotropic medication or a combination of nonpharmacological
 13 interventions and psychotropic medication, is followed.

14 (5) The department may adopt other rules necessary to carry out the provisions of this section.
 15

16 **OFFICE OF THE OREGON PUBLIC GUARDIAN**
 17 **AND CONSERVATOR**
 18

19 **SECTION 43. Sections 44 to 47 of this 2019 Act are added to and made a part of ORS**
 20 **125.675 to 125.691.**

21 **SECTION 44. The Office of the Oregon Public Guardian and Conservator is established**
 22 **to:**

23 (1) **Provide guardianship and conservator services described in ORS 125.675 to 125.691 to**
 24 **persons in need of public guardian and conservator services who are located in areas of this**
 25 **state where public guardian and conservator programs, services and other assistance are**
 26 **inadequate or nonexistent; and**

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

29 **SECTION 45. (1) There is established an Oregon Public Guardian and Conservator Advi-**
 30 **sory Committee consisting of five members appointed by the Governor, two of whom must**
 31 **have expertise in the provision of guardianship, conservatorship and other fiduciary services**
 32 **for persons with inadequate resources.**

33 (2) **Members of the committee are subject to confirmation by the Senate under ORS**
 34 **171.562 and 171.565.**

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

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

43 (5) **A majority of the members of the committee constitutes a quorum for the transaction**
 44 **of business. Decisions may be made by a majority of the quorum.**

45 (6) **The committee shall meet at least once each month at a place, day and hour deter-**

1 **mined by the committee. The committee also shall meet at other times and places specified**
 2 **by the call of the chairperson or of a majority of the members of the committee. The com-**
 3 **mittee shall confer each month with the Oregon Public Guardian and Conservator. All**
 4 **meetings are subject to ORS 192.610 to 192.690.**

5 (7) **Members of the committee are not entitled to compensation or reimbursement for**
 6 **expenses and serve as volunteers on the committee.**

7 **SECTION 46. The Oregon Public Guardian and Conservator Advisory Committee shall:**

8 (1) **Monitor the Office of the Oregon Public Guardian and Conservator.**

9 (2) **Advise the Governor and the Legislative Assembly on the Office of the Oregon Public**
 10 **Guardian and Conservator.**

11 (3) **Nominate, after interviews and according to prescribed criteria, three persons to fill**
 12 **the Oregon Public Guardian and Conservator position or to fill a vacancy in the position.**

13 **SECTION 47. The Oregon Public Guardian and Conservator shall establish procedures to**
 14 **maintain the confidentiality of the records and files related to guardianship or conservator**
 15 **services.**

16 **SECTION 48. ORS 125.678 is amended to read:**

17 125.678. (1) The [*Long Term Care Ombudsman appointed under ORS 441.403, in consultation with*
 18 *the Residential Ombudsman and Public Guardianship Advisory Board,*] **Governor** shall appoint the
 19 Oregon Public Guardian and Conservator [*in the office of the Long Term Care Ombudsman*] for a
 20 four-year term. The Oregon Public Guardian and Conservator serves at the pleasure of the [*Long*
 21 *Term Care Ombudsman*] **Governor** and may be removed by the [*Long Term Care Ombudsman*]
 22 **Governor** for good cause. If there is a vacancy **in the position** for any cause, the [*Long Term Care*
 23 *Ombudsman*] **Governor** shall make an appointment [*within*] **no later than 60 days after the va-**
 24 **cancy occurs.** The Oregon Public Guardian and Conservator shall receive a salary as fixed by the
 25 [*Long Term Care Ombudsman*] **Governor** and be reimbursed for all reasonable travel and other ex-
 26 penses incurred in the performance of official duties.

27 (2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the
 28 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to ORS
 29 125.675 to 125.691[, *within the office of the Long Term Care Ombudsman*].

30 (3) The Oregon Public Guardian and Conservator may:

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

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

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

39 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.691.

40 (4) The [*Long Term Care Ombudsman*] **Oregon Public Guardian and Conservator** may hire or
 41 contract with staff to serve in the Office of the [*Long Term Care Ombudsman*] **Oregon Public**
 42 **Guardian and Conservator** as necessary to advise and support the **Office of the** Oregon Public
 43 Guardian and Conservator.

44 (5)(a) The Oregon Public Guardian and Conservator may delegate the exercise or discharge of
 45 any power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian

1 and Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or
 2 under contract with the Oregon Public Guardian and Conservator as appropriate for the purpose
 3 of conducting an official act in the name of the Oregon Public Guardian and Conservator. The offi-
 4 cial act of any person acting in the name of the Oregon Public Guardian and Conservator by the
 5 authority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public
 6 Guardian and Conservator.

7 (b) Notwithstanding paragraph (a) of this subsection, a court may not appoint a deputy public
 8 guardian and conservator as a fiduciary in a proceeding under ORS 125.675 to 125.691 but shall
 9 appoint the Oregon Public Guardian and Conservator as the fiduciary in the proceeding.

10 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-
 11 nations from public and private sources for the purpose of carrying out the provisions of ORS
 12 125.675 to 125.691, which moneys shall be deposited in the Oregon Public Guardian and Conservator
 13 Fund established under ORS 125.689.

14 **SECTION 49.** ORS 125.680 is amended to read:

15 125.680. The Oregon Public Guardian and Conservator shall:

16 (1) Educate the public about the role and function of the **Office of the** Oregon Public Guardian
 17 and Conservator and about public guardian and conservator services.

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

21 (3) Certify deputy public guardians and conservators.

22 (4) Develop model standards of eligibility and professional conduct for deputy public guardians
 23 and conservators and of practice and procedure in public guardianship and conservatorship pro-
 24 ceedings.

25 (5) Develop and implement training and educational materials for deputy public guardians and
 26 conservators.

27 (6) Establish and operate a program to recruit, train and supervise volunteers to provide as-
 28 sistance to the **Office of the** Oregon Public Guardian and Conservator, deputy public guardians and
 29 conservators and clients.

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

33 (8) Cooperate with offices of county public guardian and conservator operating under ORS
 34 125.700.

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

37 (10) Make recommendations to the Legislative Assembly for policy and legislation regarding
 38 implementation, improvement and expansion of public guardian and conservator services in this
 39 state.

40
 41 **CONFORMING AMENDMENTS**

42
 43 **SECTION 50.** ORS 21.007 is amended to read:

44 21.007. It is the intent of the Legislative Assembly that funding be provided to the following
 45 entities by appropriations each biennium to fund programs, services and activities that were funded

1 through court fees before the 2011-2013 biennium:

2 (1) To the counties of this state for the purposes of funding mediation services, conciliation
3 services and other services in domestic relations cases.

4 (2) To the counties of this state for the purposes of funding the operation of law libraries or of
5 providing law library services.

6 (3) To Portland State University and the University of Oregon to fund the programs and ex-
7 penses of the Mark O. Hatfield School of Government and the University of Oregon School of Law
8 under ORS 36.100 to 36.238 and 183.502.

9 (4) To the Housing and Community Services Department for the purpose of funding programs
10 that defray the cost of rent for dwelling units for very low income households.

11 (5) To the Higher Education Coordinating Commission to fund clinical legal education programs
12 at accredited institutions of higher education that provide civil legal services to victims of domestic
13 violence, stalking or sexual assault.

14 (6) To the State Department of Agriculture for the purpose of funding mediation programs es-
15 tablished by the department, other than individual farm credit mediations.

16 (7) To the Judicial Department for the purposes of funding the appellate settlement program
17 established under ORS 2.560.

18 (8) To the *[Department of Human Services]* **Office of the Foster Child Ombudsman** for the
19 funding of the Office of Children's Advocate.

20 **SECTION 51.** ORS 125.060 is amended to read:

21 125.060. (1) The notices required by this section must be given to all persons whose identities
22 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
23 give the notice.

24 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-
25 tective order must be given by the petitioner to the following persons:

26 (a) The respondent, if the respondent has attained 14 years of age.

27 (b) The spouse, parents and adult children of the respondent.

28 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most
29 closely related to the respondent.

30 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or
31 welfare of the respondent.

32 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
33 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
34 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and
35 any person acting as attorney-in-fact for the respondent under a power of attorney.

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

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

40 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
41 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
42 regional office that has responsibility for the payments to the protected person.

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

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

4 (k) If the respondent is committed to the legal and physical custody of the Department of Cor-
 5 rections, the Attorney General and the superintendent or other officer in charge of the facility in
 6 which the respondent is confined.

7 (L) If the respondent is a foreign national, the consulate for the respondent's country.

8 (m) Any other person that the court requires.

9 (3) Notice of a motion for the termination of the protective proceedings, for removal of a
 10 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's
 11 actions or for protective orders in addition to those sought in the petition must be given by the
 12 person making the motion to the following persons:

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

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

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

17 (d) If the protected person is receiving moneys paid or payable by the United States through the
 18 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
 19 fairs regional office that has responsibility for the payments to the protected person.

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

23 (f) Any other person that the court requires.

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

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

33 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting
 34 to the adoption of a minor, the notice provided for in this section must also be given to the minor's
 35 brothers, sisters, aunts, uncles and grandparents.

36 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-
 37 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be
 38 given by the petitioner to the following persons:

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

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

44 (c) If the respondent is a resident of a mental health treatment facility or a residential facility
 45 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends

1 to place the respondent in such a facility, the system described in ORS 192.517 (1).

2 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding
 3 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this
 4 section, and the address, telephone number and other contact information of the protected person,
 5 must be given by the person making the motion to the following persons:

6 (a) Any attorney who represented the protected person at any time during the protective pro-
 7 ceeding.

8 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion
 9 seeks authority to place the protected person in a nursing home or residential facility, the Office
 10 of the Long Term Care Ombudsman **or the Office of the Residential Facilities Ombudsman.**

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

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

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

18 **SECTION 52.** ORS 125.075 is amended to read:

19 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected
 20 person may present objections to a petition or to a motion in a protective proceeding, including but
 21 not limited to:

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

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

24 (c) Any other person the court may allow.

25 (2) Objections to a petition may be either written or oral. Objections to a motion must be in
 26 writing, except that a protected person may object orally in person or by other means that are in-
 27 tended to convey the protected person's objections to the court. Objections to a petition or to a
 28 motion must be made or filed with the court within 15 days after notice of the petition or motion
 29 is served or mailed in the manner prescribed by ORS 125.065. The court shall designate the manner
 30 in which oral objections may be made that ensures that a protected person will have the protected
 31 person's objection presented to the court. The clerk of the court shall provide a means of reducing
 32 the oral objections to a signed writing for the purpose of filing the objection.

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

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

41 (a) The respondent or the protected person;

42 (b) The Office of the Long Term Care Ombudsman **or the Office of the Residential Facilities**
 43 **Ombudsman;** or

44 (c) The system described in ORS 192.517 (1).

45 (5) The court for good cause shown may provide for a different method or time of giving notice

1 under subsection (3) of this section.

2 **SECTION 53.** ORS 125.687 is amended to read:

3 125.687. (1) A court may not appoint the Oregon Public Guardian and Conservator as a fiduciary
 4 for a person unless the Oregon Public Guardian and Conservator has petitioned for or consented to
 5 the appointment. If appointed as a fiduciary by the court, the Oregon Public Guardian and
 6 Conservator, and any deputy public guardian and conservator designated to act on behalf of the
 7 Oregon Public Guardian and Conservator, shall serve as provided in this chapter and ORS 127.005
 8 and 127.015, except as expressly stated otherwise in ORS 125.675 to 125.691 or by order of the court.

9 (2) The Oregon Public Guardian and Conservator shall file an official bond in an amount deter-
 10 mined in consultation with the Oregon Department of Administrative Services. The bond shall inure
 11 to the joint benefit of the several public guardianship and conservatorship estates in which the
 12 Oregon Public Guardian and Conservator is providing services, but a bond is not required to be filed
 13 in individual estates.

14 (3) The court may not charge the Oregon Public Guardian and Conservator a fee for the filing
 15 of a petition or any other pleading under this chapter when the filing is made in connection with
 16 the provision of public guardian and conservator services under ORS 125.675 to 125.691.

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

20 (b) If a client is indigent, the Oregon Public Guardian and Conservator shall have a claim
 21 against the client or the client’s estate for the portion of any payment ordered under paragraph (a)
 22 of this subsection that remains unpaid.

23 (5) The court may not order the Oregon Public Guardian and Conservator[,] **or** a deputy public
 24 guardian and conservator [*or the office of the Long Term Care Ombudsman*] to pay court costs or
 25 attorney fees in a proceeding brought on behalf of a client under ORS 125.675 to 125.691.

26 **SECTION 54.** ORS 443.380 is amended to read:

27 443.380. As used in ORS 443.380 to 443.394:

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

31 (2) “Designee” means an individual appointed by the Residential Facilities Ombudsman in ac-
 32 cordance with ORS 443.386.

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

35 [(4) “*Long Term Care Ombudsman*” means the individual appointed by the Governor under ORS
 36 441.403.]

37 [(5)] (4) “Resident” means an individual who resides in a residential facility.

38 [(6)(a)] (5)(a) “Residential facility” means one of the following:

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

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

41 (C) A licensed adult foster home as defined in ORS 443.705 that serves persons with mental ill-
 42 ness or developmental disabilities.

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

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

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

1 (G) A conversion facility licensed under ORS 443.431.

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

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

4 (B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treatment.

5 [(7)] (6) "Residential Facilities Ombudsman Program" means the services provided by the Resi-
6 dential Facilities Ombudsman.

7 **SECTION 55.** ORS 443.738 is amended to read:

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

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

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

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

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

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

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

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

44 (6) Providers shall make available at least six hours of activities each week which are of inter-
45 est to the residents, not including television or movies. The licensing agency shall make information

1 about resources for activities available to providers upon request. Providers or substitute caregivers
2 shall be directly involved with residents on a daily basis.

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

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

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

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

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

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

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

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

41 (c) The resident has the right to an administrative hearing prior to an involuntary transfer or
42 discharge. If the resident is being transferred or discharged for a medical emergency, or to protect
43 the welfare of the resident or other residents, as defined by rule, the hearing must be held within
44 seven days of the transfer or discharge. The provider shall hold a space available for the resident
45 pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing

1 transfer notices and hearings for residents of long term care facilities shall apply to adult foster
2 homes.

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

5 (13) Any lessor of a building in which an adult foster home is located may not interfere with the
6 admission, discharge or transfer of any resident in the adult foster home unless the lessor is a pro-
7 vider or coprovider on the license.

8 **SECTION 56.** ORS 443.767 is amended to read:

9 443.767. (1) When the licensing agency receives a complaint that alleges that a resident of a li-
10 censed adult foster home has been injured, abused or neglected, and that the resident's health or
11 safety is in imminent danger, or that the resident has died or been hospitalized, the investigation
12 shall begin immediately after the complaint is received. If the investigator determines that the
13 complaint is substantiated, the licensing agency shall take appropriate corrective action imme-
14 diately.

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

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

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

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

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

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

34 (C) The facility; and

35 (D) The *[Office of the Long Term Care]* **Residential Facilities** Ombudsman.

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

38 (6)(a) The complaint and the investigation report shall be available to the public at the local
39 office of the licensing agency or the type B area agency, if appropriate. When the licensing agency
40 or type B area agency concludes the investigation of a complaint, the licensing agency or type B
41 area agency shall clearly designate the outcome of the complaint investigation and make the desig-
42 nation available to the public together with the complaint and the investigation report.

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

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

REPEAL AND OPERATIVE DATES

SECTION 57. Sections 4 to 8, 11 to 15, 28, 30 to 36 and 43 to 47 of this 2019 Act and the amendments to statutes by sections 9, 10, 16 to 27, 29, 37 to 42 and 48 to 56 of this 2019 Act become operative on January 1, 2020.

SECTION 58. The administrator of the Office of Oregon Ombudsmen shall be appointed without delay and may take any actions before the operative date specified in section 57 of this 2019 Act that are necessary to carry out sections 4 to 8, 11 to 15, 28, 30 to 36 and 43 to 47 of this 2019 Act and the amendments to statutes by sections 9, 10, 16 to 27, 29, 37 to 42 and 48 to 56 of this 2019 Act on and after the operative date specified in section 57 of this 2019 Act.

SECTION 59. ORS 441.419 is repealed.

CAPTIONS

SECTION 60. The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

EMERGENCY CLAUSE

SECTION 61. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.
