

## SENATE AMENDMENTS TO SENATE BILL 1036

By COMMITTEE ON HUMAN SERVICES

April 16

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and lines 3 through  
2 5 and insert “125.060, 125.075, 125.678, 125.680, 125.687, 418.201, 418.648, 418.992, 419B.005, 441.402,  
3 441.403, 441.406, 441.411, 441.413, 441.416, 441.417, 441.418, 443.380, 443.382, 443.386, 443.390, 443.396,  
4 443.447, 443.455, 443.767 and 443.825; repealing ORS 441.419; and declaring an emergency.”.

5 In line 8, after “OMBUDSMEN” insert “AND ADVOCATES”.

6 In line 10, after “Ombudsmen” insert “and Advocates”.

7 In line 17, after “Ombudsmen” insert “and Advocates”.

8 In line 24, after “Ombudsmen” insert “and Advocates”.

9 On page 2, line 4, after “Ombudsmen” insert “and Advocates”.

10 In line 22, after the period insert “The ombudsman may be removed for just cause upon recom-  
11 mendation to the Governor by the Foster Child Ombudsman Advisory Committee.”.

12 On page 3, line 43, delete “shall” and insert “may”.

13 On page 5, line 9, after “are” delete the rest of the line and line 10 and insert “entitled to  
14 compensation and expenses as provided in ORS 292.495.”.

15 On page 7, line 4, after “be” delete the rest of the line and lines 5 and 6 and insert “paid into  
16 the State Treasury and credited to the General Fund and are available for general governmental  
17 expenses.”.

18 In line 25, after the period insert “The ombudsman may be removed for just cause upon recom-  
19 mendation to the Governor by the Foster Parent Ombudsman Advisory Committee established in  
20 section 14 of this 2019 Act.”.

21 On page 8, line 39, delete “shall” and insert “may”.

22 On page 10, line 5, after “are” delete the rest of the line and line 6 and insert “entitled to  
23 compensation and expenses as provided in ORS 292.495.”.

24 On page 15, after line 38, insert:

25 “**SECTION 19.** ORS 441.402 is amended to read:

26 “441.402. As used in ORS 441.402 to 441.419:

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

30 “(2) ‘Designee’ means an individual appointed by the Long Term Care Ombudsman under ORS  
31 441.413 to serve as a representative in a local community in order to carry out the purpose of ORS  
32 441.402 to 441.419.

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

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

1 “(b) Adult foster homes, as defined in ORS 443.705, with residents over 60 years of age;  
2 “(c) Residential care facilities, as defined in ORS 443.400; [and]  
3 “(d) Continuing care retirement communities, as defined in ORS 101.020; and  
4 **“(e) Conversion facilities licensed under ORS 443.431.**  
5 “(4) ‘Long Term Care Ombudsman Program’ means the services provided by the Long Term Care  
6 Ombudsman.”  
7 In line 39, delete “19” and insert “20”.  
8 In line 40, after “established.” delete the rest of the line and line 41 and insert “The  
9 Governor”.  
10 On page 16, line 8, after “The” delete the rest of the line and insert “field of aging;”.  
11 In line 15, delete “20” and insert “21”.  
12 In line 17, delete the boldfaced material.  
13 On page 17, delete lines 13 through 45.  
14 On page 18, delete lines 1 and 2.  
15 On page 20, line 10, delete “not” and restore “and expenses as pro-”.  
16 In lines 11 and 12, restore the bracketed material and delete the boldfaced material.  
17 Delete lines 37 through 45.  
18 On page 21, delete lines 1 through 38.  
19 In line 39, delete “28” and insert “27”.  
20 In line 40, after “Ombudsmen” insert “and Advocates”.  
21 In line 41, after “Ombudsmen” insert “and Advocates”.  
22 On page 22, delete lines 3 through 45 and delete page 23.  
23 On page 24, delete lines 1 through 9 and insert:  
24 **“SECTION 28.** ORS 443.382 is amended to read:  
25 *“443.382. [(1) The Long Term Care Ombudsman, in consultation with the Residential Ombudsman*  
26 *and Public Guardianship Advisory Board established under ORS 441.416, shall appoint a Residential*  
27 *Facilities Ombudsman for a four-year term. The Residential Facilities Ombudsman serves at the*  
28 *pleasure of the Long Term Care Ombudsman and may be removed by the Long Term Care Ombudsman*  
29 *for cause. The Long Term Care Ombudsman shall fill any vacancy within 60 days. The salary of the*  
30 *Residential Facilities Ombudsman shall be determined by the Long Term Care Ombudsman. The Res-*  
31 *idential Facilities Ombudsman shall be reimbursed for all reasonable travel and other expenses in-*  
32 *curring in the performance of the ombudsman’s official duties.]*  
33 **“(1) The Office of the Residential Facilities Ombudsman is established in the Office of**  
34 **Oregon Ombudsmen and Advocates. The Governor shall appoint the Residential Facilities**  
35 **Ombudsman for a four-year term from a list of three nominees nominated by the Residential**  
36 **Facilities Ombudsman Advisory Committee established under section 29 of this 2019 Act. A**  
37 **vacancy in the position shall be filled no later than 60 days after the vacancy occurs, in the**  
38 **same manner as an appointment is made.**  
39 **“(2) The Residential Facilities Ombudsman may be removed for just cause, upon recom-**  
40 **mendation to the Governor by the Residential Facilities Ombudsman Advisory Committee.**  
41 **“(3) The Residential Facilities Ombudsman shall have background and experience in the**  
42 **following areas:**  
43 **“(a) The fields of mental health or intellectual or developmental disabilities;**  
44 **“(b) Working with community programs;**  
45 **“(c) Residential facility regulatory and policy issues;**

1       **“(d) Working with and involvement in volunteer programs; and**

2       **“(e) Administration and management.**

3       “[(2)] (4) The Residential Facilities Ombudsman may, subject to the approval of the Long Term  
4 Care Ombudsman, hire or contract with volunteers, staff, deputy ombudsmen and other qualified  
5 individuals as necessary to perform the duties of the ombudsman.

6       “[(3)] (5) The Residential Facilities Ombudsman shall:

7       “(a) Identify, investigate and resolve complaints made by or on behalf of residents about ad-  
8 ministrative actions.

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

12       “(c) Widely publicize the Residential Facilities Ombudsman’s services, purpose and mode of op-  
13 eration.

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

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

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

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

24       “(h) Represent the interests of residents before government agencies and seek administrative,  
25 legal or other appropriate remedies to protect the health, safety, welfare and rights of residents.

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

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

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

33       “(L) Train designees.

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

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

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

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

42       “(q) Make recommendations for improvements in the functioning of the residential facility sys-  
43 tem in this state.

44       “(r) Collaborate with the Oregon Health Authority, the Department of Human Services, and any  
45 other appropriate agencies and organizations to establish a statewide system to collect and analyze

1 information on complaints about and conditions in residential facilities for the purpose of publicizing  
2 improvements and resolving significant problems for residents.

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

4 “(t) Collect and compile data necessary to prepare the report submitted to the Governor under  
5 ORS 182.500.

6 “(u) Adopt rules necessary for carrying out ORS 443.380 to 443.394, in accordance with ORS  
7 chapter 183, in consultation with the [*Long Term Care Ombudsman and the Residential Ombudsman*  
8 *and Public Guardianship Advisory Board*] **Residential Facilities Ombudsman Advisory Commit-**  
9 **tee established in section 29 of this 2019 Act.**

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

15 “**SECTION 29.** (1) The Residential Facilities Ombudsman Advisory Committee is established  
16 consisting of five members appointed by the Governor, one of whom must be a representative of  
17 persons with mental illness and one of whom must be a representative of persons with intellectual  
18 or developmental disabilities. Members are subject to”.

19 In line 32, after “are” delete the rest of the line and delete line 33 and insert “entitled to com-  
20 pensation and expenses as provided in ORS 292.495.”.

21 In line 34, delete “31” and insert “30”.

22 Delete lines 40 through 45 and delete page 25.

23 On page 26, delete lines 1 through 42 and insert:

24 “**SECTION 31.** ORS 443.386 is amended to read:

25 “443.386. (1) The Residential Facilities Ombudsman [*shall*] **may**, *in consultation with the Long*  
26 *Term Care Ombudsman,*] appoint designees to serve as representatives of the ombudsman in local  
27 communities. The ombudsman shall regularly monitor the functions of designees.

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

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

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

36 “**SECTION 32.** ORS 443.390 is amended to read:

37 “443.390. (1) If a complaint is made on behalf of a resident who has limited or no decision-making  
38 capacity and is unable to communicate consent for the Residential Facilities Ombudsman to inves-  
39 tigate the complaint, and:

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

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

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

45 “(b) The resident has a legal representative who refuses to provide consent to the investigation,

1 the ombudsman may proceed without consent if the ombudsman has reasonable cause to believe that  
2 it is in the resident's best interests.

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

6 “(3) Following an investigation of a complaint, the Residential Facilities Ombudsman or a  
7 designee shall report the ombudsman's findings and conclusions to the resident who made the com-  
8 plaint and to a complainant acting on behalf of a resident. If the ombudsman or designee finds  
9 conditions threatening the health, safety or welfare of a resident that cannot be resolved informally,  
10 the ombudsman or designee shall refer the findings to the Department of Human Services, the  
11 Oregon Health Authority or law enforcement officials.

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

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

18 “(6) The Department of Human Services shall prohibit retaliation or reprisals by a residential  
19 facility or other entity with respect to any resident, employee or other person who files a complaint,  
20 provides information or otherwise cooperates with the Residential Facilities Ombudsman or a  
21 designee and shall provide by rule for appropriate sanctions with respect to the retaliation and re-  
22 prisals.

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

29 “(8) **An employee or agent of a residential facility who makes a complaint under this**  
30 **section may not be subjected to retaliation by an official or other employee of the residential**  
31 **facility solely for making a report, including but not limited to restriction of otherwise lawful**  
32 **access to the facility or to a resident of the facility, or, if an employee, to dismissal or**  
33 **harassment.”.**

34 In line 43, delete “38” and insert “33”.

35 On page 27, line 2, after “of” delete the rest of the line and insert “the Residential Facilities  
36 Ombudsman subaccount in the Office of Oregon Ombudsmen and Advocates Account established  
37 in”.

38 In line 4, delete “39” and insert “34”.

39 In line 34, after “Ombudsmen” insert “and Advocates”.

40 In line 35, delete “40” and insert “35”.

41 On page 28, delete lines 9 through 45.

42 On page 29, delete lines 1 through 14 and insert:

43 “**SECTION 36.** ORS 443.825 is amended to read:

44 “443.825. All penalties recovered under ORS 443.790 to 443.815 shall be deposited:

45 “(1) In the Quality Care Fund established in ORS 443.001 if paid by an adult foster home li-

1 censed to provide residential care to persons with physical disabilities.

2 “[*(2) In the Long Term Care Ombudsman Account established in ORS 441.419 if paid by an adult*  
3 *foster home licensed to provide care to persons with mental illness or developmental disabilities*]

4 “**(2) In the Residential Facilities Ombudsman subaccount in the Office of Oregon**  
5 **Ombudsmen and Advocates Account established in section 2 of this 2019 Act if paid by an**  
6 **adult foster home licensed to provide care to persons with mental illness or intellectual or**  
7 **developmental disabilities.**”.

8 In line 19, delete “43” and insert “37” and delete “44 to 47” and insert “38 to 41”.

9 In line 21, delete “44” and insert “38”.

10 In line 29, delete “45” and insert “39”.

11 On page 30, line 5, after “are” delete the rest of the line and line 6 and insert “entitled to  
12 compensation and expenses as provided in ORS 292.495.”.

13 In line 7, delete “46” and insert “40”.

14 In line 13, delete “47” and insert “41”.

15 In line 16, delete “48” and insert “42”.

16 On page 31, line 14, delete “49” and insert “43”.

17 Delete lines 43 through 45.

18 On page 32, delete lines 1 through 19.

19 In line 20, delete “51” and insert “44”.

20 On page 34, line 18, delete “52” and insert “45”.

21 On page 35, delete lines 2 through 25 and insert:

22 “**SECTION 46.** ORS 125.687 is amended to read:

23 “125.687. (1) A court may not appoint the Oregon Public Guardian and Conservator as a  
24 fiduciary for a person unless the Oregon Public Guardian and Conservator has petitioned for or  
25 consented to the appointment. If appointed as a fiduciary by the court, the Oregon Public Guardian  
26 and Conservator, and any deputy public guardian and conservator designated to act on behalf of the  
27 Oregon Public Guardian and Conservator, shall serve as provided in this chapter and ORS 127.005  
28 and 127.015, except as expressly stated otherwise in ORS 125.675 to 125.691 or by order of the court.

29 “(2) The Oregon Public Guardian and Conservator shall file an official bond in an amount de-  
30 termined in consultation with the Oregon Department of Administrative Services. The bond shall  
31 inure to the joint benefit of the several public guardianship and conservatorship estates in which  
32 the Oregon Public Guardian and Conservator is providing services, but a bond is not required to  
33 be filed in individual estates.

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

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

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

43 “(5) The court may not order the Oregon Public Guardian and Conservator, a deputy public  
44 guardian and conservator or the Office of [*the Long Term Care Ombudsman*] **Oregon Ombudsmen**  
45 **and Advocates** to pay court costs or attorney fees in a proceeding brought on behalf of a client

1 under ORS 125.675 to 125.691.”.

2 In line 26, delete “54” and insert “47”.

3 On page 36, delete line 1.

4 Delete lines 7 through 45 and delete page 37.

5 On page 38, delete lines 1 through 7.

6 In line 8, delete “56” and insert “48”.

7 In line 35, restore the bracketed material and after “Care” insert “Ombudsman or the”.

8 Delete page 39 and insert:

9  
10 **“REPEAL AND OPERATIVE DATES**

11  
12 **“SECTION 49. Sections 4 to 8, 11 to 15, 27, 29 and 37 to 41 of this 2019 Act and the**  
13 **amendments to statutes by sections 9, 10, 16 to 26, 28, 31 to 36 and 42 to 48 of this 2019 Act**  
14 **become operative on January 1, 2020.**

15 **“SECTION 50. The administrator of the Office of Oregon Ombudsmen and Advocates**  
16 **shall be appointed without delay and may take any actions before the operative date specified**  
17 **in section 49 of this 2019 Act that are necessary to carry out sections 4 to 8, 11 to 15, 27, 29**  
18 **and 37 to 41 of this 2019 Act and the amendments to statutes by sections 9, 10, 16 to 26, 28,**  
19 **31 to 36 and 42 to 48 of this 2019 Act on and after the operative date specified in section 49**  
20 **of this 2019 Act.**

21 **“SECTION 51. ORS 441.419 is repealed.**

22  
23 **“CAPTIONS**

24  
25 **“SECTION 52. The unit captions used in this 2019 Act are provided only for the conven-**  
26 **ience of the reader and do not become part of the statutory law of this state or express any**  
27 **legislative intent in the enactment of this 2019 Act.**

28  
29 **“EMERGENCY CLAUSE**

30  
31 **“SECTION 53. This 2019 Act being necessary for the immediate preservation of the public**  
32 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**  
33 **on its passage.”.**