

SB 1036-1
(LC 4326)
4/4/19 (LHF/ps)

Requested by Representative STARK (at the request of the Long Term Care Ombudsman)

**PROPOSED AMENDMENTS TO
SENATE BILL 1036**

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

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

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

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

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

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

12 In line 22, after the period insert “The ombudsman may be removed for
13 just cause upon recommendation to the Governor by the Foster Child Om-
14 budsman Advisory Committee.”.

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

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

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

21 In line 25, after the period insert “The ombudsman may be removed for

1 just cause upon recommendation to the Governor by the Foster Parent Om-
2 budsman Advisory Committee established in section 14 of this 2019 Act.”.

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

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

6 On page 15, after line 38 insert:

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

8 “441.402. As used in ORS 441.402 to 441.419:

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

12 “(2) ‘Designee’ means an individual appointed by the Long Term Care
13 Ombudsman under ORS 441.413 to serve as a representative in a local com-
14 munity in order to carry out the purpose of ORS 441.402 to 441.419.

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

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

18 “(b) Adult foster homes, as defined in ORS 443.705, with residents over
19 60 years of age;

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

21 “(d) Continuing care retirement communities, as defined in ORS 101.020;

22 **and**

23 **“(e) Conversion facilities licensed under ORS 443.431.**

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

26 In line 39, delete “19” and insert “20”.

27 In line 40, after “established.” delete the rest of the line and line 41 and
28 insert “The Governor”.

29 On page 16, line 8, after “The” delete the rest of the line and insert “field
30 of aging;”.

1 In line 15, delete “20” and insert “21”.

2 In line 17, delete the boldfaced material.

3 On page 17, delete lines 13 through 45.

4 On page 18, delete lines 1 and 2.

5 On page 20, line 10, delete “not” and restore “and expenses as pro-”.

6 In lines 11 and 12, restore the bracketed material and delete the boldfaced
7 material.

8 Delete lines 37 through 45.

9 On page 21, delete lines 1 through 38.

10 In line 39, delete “28” and insert “27”.

11 In line 40, after “Ombudsmen” insert “and Advocates”.

12 In line 41, after “Ombudsmen” insert “and Advocates”.

13 On page 22, delete lines 3 through 45 and delete page 23.

14 On page 24, delete lines 1 through 9 and insert:

15 **“SECTION 28.** ORS 443.382 is amended to read:

16 *“443.382. [(1) The Long Term Care Ombudsman, in consultation with the*
17 *Residential Ombudsman and Public Guardianship Advisory Board established*
18 *under ORS 441.416, shall appoint a Residential Facilities Ombudsman for a*
19 *four-year term. The Residential Facilities Ombudsman serves at the pleasure*
20 *of the Long Term Care Ombudsman and may be removed by the Long Term*
21 *Care Ombudsman for cause. The Long Term Care Ombudsman shall fill any*
22 *vacancy within 60 days. The salary of the Residential Facilities Ombudsman*
23 *shall be determined by the Long Term Care Ombudsman. The Residential*
24 *Facilities Ombudsman shall be reimbursed for all reasonable travel and other*
25 *expenses incurred in the performance of the ombudsman’s official duties.]*

26 **“(1) The Office of the Residential Facilities Ombudsman is estab-**
27 **lished in the Office of Oregon Ombudsmen and Advocates. The Gov-**
28 **ernor shall appoint the Residential Facilities Ombudsman for a**
29 **four-year term from a list of three nominees nominated by the Resi-**
30 **dential Facilities Ombudsman Advisory Committee established under**

1 **section 29 of this 2019 Act. A vacancy in the position shall be filled no**
2 **later than 60 days after the vacancy occurs, in the same manner as**
3 **an appointment is made.**

4 **“(2) The Residential Facilities Ombudsman may be removed for just**
5 **cause, upon recommendation to the Governor by the Residential Fa-**
6 **cilities Ombudsman Advisory Committee.**

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

9 **“(a) The fields of mental health or intellectual or developmental**
10 **disabilities;**

11 **“(b) Working with community programs;**

12 **“(c) Residential facility regulatory and policy issues;**

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

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

15 **“[(2)] (4) The Residential Facilities Ombudsman may, subject to the ap-**
16 **proval of the Long Term Care Ombudsman, hire or contract with volunteers,**
17 **staff, deputy ombudsmen and other qualified individuals as necessary to**
18 **perform the duties of the ombudsman.**

19 **“[(3)] (5) The Residential Facilities Ombudsman shall:**

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

22 **“(b) Provide residents, families of residents, guardians, community mem-**
23 **bers and administrators and staff of residential facilities with information**
24 **regarding the rights of residents as set forth in ORS 427.107 and 430.210 and**
25 **any other applicable rights of residents.**

26 **“(c) Widely publicize the Residential Facilities Ombudsman’s services,**
27 **purpose and mode of operation.**

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

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

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

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

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

12 “(i) Analyze, comment on and monitor the development and implementa-
13 tion of federal, state and local laws and other governmental policies per-
14 taining to the health, safety, welfare and rights of residents.

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

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

19 “(L) Train designees.

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

22 “(n) To the extent practicable, assist residents who move from a residen-
23 tial facility to a home care setting.

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

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

29 “(q) Make recommendations for improvements in the functioning of the
30 residential facility system in this state.

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

6 “(s) Provide information to public agencies about the problems of resi-
7 dents.

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

10 “(u) Adopt rules necessary for carrying out ORS 443.380 to 443.394, in
11 accordance with ORS chapter 183, in consultation with the [*Long Term Care*
12 *Ombudsman and the Residential Ombudsman and Public Guardianship Ad-*
13 *visory Board*] **Residential Facilities Ombudsman Advisory Committee**
14 **established in section 29 of this 2019 Act.**

15 “**(6) The Residential Facilities Ombudsman shall contract with the**
16 **state protection and advocacy system described in ORS 192.517 (1) to**
17 **provide services and assistance to persons who are prospective or**
18 **current residents of a residential facility for individuals with develop-**
19 **mental disabilities when the system has received a notice regarding**
20 **the person pursuant to ORS 125.060 (7)(c) or (8)(c).**

21 “**SECTION 29.** (1) The Residential Facilities Ombudsman Advisory Com-
22 mittee is established consisting of five members appointed by the Governor,
23 one of whom must be a representative of persons with mental illness and one
24 of whom must be a representative of persons with intellectual or develop-
25 mental disabilities. Members are subject to”.

26 In line 32, after “are” delete the rest of the line and delete line 33 and
27 insert “entitled to compensation and expenses as provided in ORS 292.495.”.

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

29 Delete lines 40 through 45 and delete page 25.

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

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

2 “443.386. (1) The Residential Facilities Ombudsman [*shall*] **may**, *in con-*
3 *sultation with the Long Term Care Ombudsman,*] appoint designees to serve
4 as representatives of the ombudsman in local communities. The ombudsman
5 shall regularly monitor the functions of designees.

6 “(2) The Residential Facilities Ombudsman shall prescribe the qualifica-
7 tions of designees by rule.

8 “(3) To be appointed as a designee, a person must complete an initial
9 training prescribed by the Residential Facilities Ombudsman by rule and at-
10 tend required continuing educational training sessions that are approved by
11 the ombudsman.

12 “(4) Designees must sign a contract with the Residential Facilities Om-
13 budsman that outlines the scope of their duties. Violation of the contract
14 is cause for terminating the appointment of a designee.

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

16 “443.390. (1) If a complaint is made on behalf of a resident who has limited
17 or no decision-making capacity and is unable to communicate consent for the
18 Residential Facilities Ombudsman to investigate the complaint, and:

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

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

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

25 “(b) The resident has a legal representative who refuses to provide con-
26 sent to the investigation, the ombudsman may proceed without consent if the
27 ombudsman has reasonable cause to believe that it is in the resident’s best
28 interests.

29 “(2) A resident shall have the right to refuse to communicate with the
30 ombudsman or the designee. The refusal shall be made directly to the om-

1 budsman or the designee and not through an intermediary.

2 “(3) Following an investigation of a complaint, the Residential Facilities
3 Ombudsman or a designee shall report the ombudsman’s findings and con-
4 clusions to the resident who made the complaint and to a complainant acting
5 on behalf of a resident. If the ombudsman or designee finds conditions
6 threatening the health, safety or welfare of a resident that cannot be re-
7 solved informally, the ombudsman or designee shall refer the findings to the
8 Department of Human Services, the Oregon Health Authority or law
9 enforcement officials.

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

13 “(5) A resident or an individual who makes a complaint to the Residential
14 Facilities Ombudsman under this section, or who participates in an investi-
15 gation of a complaint, may not be subjected to a penalty, sanction or re-
16 striction 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 re-
19 prisals by a residential facility or other entity with respect to any resident,
20 employee or other person who files a complaint, provides information or
21 otherwise cooperates with the Residential Facilities Ombudsman or a
22 designee and shall provide by rule for appropriate sanctions with respect to
23 the retaliation and reprisals.

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

1 “(8) An employee or agent of a residential facility who makes a
2 complaint under this section may not be subjected to retaliation by
3 an official or other employee of the residential facility solely for
4 making a report, including but not limited to restriction of otherwise
5 lawful access to the facility or to a resident of the facility, or, if an
6 employee, to dismissal or harassment.”.

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

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

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

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

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

14 On page 28, delete lines 9 through 45.

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

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

17 “443.825. All penalties recovered under ORS 443.790 to 443.815 shall be
18 deposited:

19 “(1) In the Quality Care Fund established in ORS 443.001 if paid by an
20 adult foster home licensed to provide residential care to persons with phys-
21 ical disabilities.

22 “[(2) *In the Long Term Care Ombudsman Account established in ORS*
23 *441.419 if paid by an adult foster home licensed to provide care to persons with*
24 *mental illness or developmental disabilities]*

25 “(2) **In the Residential Facilities Ombudsman subaccount in the**
26 **Office of Oregon Ombudsmen and Advocates Account established in**
27 **section 2 of this 2019 Act if paid by an adult foster home licensed to**
28 **provide care to persons with mental illness or intellectual or develop-**
29 **mental disabilities.”.**

30 In line 19, delete “43” and insert “37” and delete “44 to 47” and insert

1 “38 to 41”.

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

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

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

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

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

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

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

10 Delete lines 43 through 45.

11 On page 32, delete lines 1 through 19.

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

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

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

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

16 “125.687. (1) A court may not appoint the Oregon Public Guardian and
17 Conservator as a fiduciary for a person unless the Oregon Public Guardian
18 and Conservator has petitioned for or consented to the appointment. If ap-
19 pointed as a fiduciary by the court, the Oregon Public Guardian and
20 Conservator, and any deputy public guardian and conservator designated to
21 act on behalf of the Oregon Public Guardian and Conservator, shall serve
22 as provided in this chapter and ORS 127.005 and 127.015, except as expressly
23 stated otherwise in ORS 125.675 to 125.691 or by order of the court.

24 “(2) The Oregon Public Guardian and Conservator shall file an official
25 bond in an amount determined in consultation with the Oregon Department
26 of Administrative Services. The bond shall inure to the joint benefit of the
27 several public guardianship and conservatorship estates in which the Oregon
28 Public Guardian and Conservator is providing services, but a bond is not
29 required to be filed in individual estates.

30 “(3) The court may not charge the Oregon Public Guardian and

1 Conservator a fee for the filing of a petition or any other pleading under this
2 chapter when the filing is made in connection with the provision of public
3 guardian and conservator services under ORS 125.675 to 125.691.

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

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

12 “(5) The court may not order the Oregon Public Guardian and
13 Conservator, a deputy public guardian and conservator or the Office of [*the*
14 *Long Term Care Ombudsman*] **Oregon Ombudsmen and Advocates** to pay
15 court costs or attorney fees in a proceeding brought on behalf of a client
16 under ORS 125.675 to 125.691.”.

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

18 On page 36, delete line 1.

19 Delete lines 7 through 45 and delete page 37.

20 On page 38, delete lines 1 through 7.

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

22 In line 35, restore the bracketed material and after “Care” insert “Om-
23 budsman or the”.

24 Delete page 39 and insert:

25

26 **“REPEAL AND OPERATIVE DATES**

27

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

1 **SECTION 50.** The administrator of the Office of Oregon
2 Ombudsmen and Advocates shall be appointed without delay and may
3 take any actions before the operative date specified in section 49 of
4 this 2019 Act that are necessary to carry out sections 4 to 8, 11 to 15,
5 27, 29 and 37 to 41 of this 2019 Act and the amendments to statutes by
6 sections 9, 10, 16 to 26, 28, 31 to 36 and 42 to 48 of this 2019 Act on and
7 after the operative date specified in section 49 of this 2019 Act.

8 **SECTION 51.** ORS 441.419 is repealed.
9

10 **“CAPTIONS**

11
12 **SECTION 52.** The unit captions used in this 2019 Act are provided
13 only for the convenience of the reader and do not become part of the
14 statutory law of this state or express any legislative intent in the
15 enactment of this 2019 Act.
16

17 **“EMERGENCY CLAUSE**

18
19 **SECTION 53.** This 2019 Act being necessary for the immediate
20 preservation of the public peace, health and safety, an emergency is
21 declared to exist, and this 2019 Act takes effect on its passage.”.
22
