A-Engrossed
Senate Bill 360

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Sponsored by Senator MORRISETTE (Presession filed.)

SUMMARY

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

Establishes Office of Health Care Ombudsman to receive and investigate complaints about provision of **Oregon Health Plan** care or services by **employees or agents of Department of Human Services,** fully capitated health plans and prepaid managed care health services organizations. [*Establishes Health Care Ombudsman Advisory Council.*]

Provides specified protections to persons filing complaint with ombudsman or participating in investigation of complaint.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

Relating to ombudsman services for persons receiving medical assistance; and declaring an emergency.

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

SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter 414.

SECTION 2. As used in sections 2 to 6 of this 2007 Act:

(1) "Action" means:

(a) A determination of a member's eligibility or continuing eligibility for an Oregon Health Plan benefit;

(b) An administrator's treatment of a member or another person acting on behalf of the member in according dignity and respect; or

(c) An administrator's explanation of the basis for a determination of eligibility or continuing eligibility.

(2) "Administrator" means any employee or agent of the Department of Human Services or of a fully capitated health plan or a prepaid managed care health services organization that contracts with the department to provide services under the Oregon Health Plan.

(3) "Complaint" means any expression of disagreement made by or on behalf of a member regarding an action of an administrator in administering Oregon Health Plan benefits.

(4) "Elderly or disabled" means eligible for federal Supplemental Security Income benefits or Oregon Supplemental Income Program benefits under ORS 411.706.

(5) "Fully capitated health plan" has the meaning given that term in ORS 414.736.

(6) "Member" means an elderly or disabled recipient of Oregon Health Plan benefits.

(7) "Oregon Health Plan" means medical assistance provided pursuant to ORS chapter 414.

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.

(8) "Prepaid managed care health services organization" has the meaning given that term in ORS 414.736.

SECTION 3. (1) The Office of the Health Care Ombudsman is established. The office shall operate independently of the Department of Human Services. The department, including the Governor's Advocacy Office within the department, shall refer complaints requiring further investigation to the office.

(2) The office shall maintain a state toll-free telephone line to accept and record:

(a) Complaints regarding the actions and conduct of an administrator that affect a member.

(b) Complaints concerning access to, quality of or limitations on the care or services being provided by an administrator to a member.

SECTION 4. (1) The Office of the Health Care Ombudsman is under the supervision and control of a Health Care Ombudsman, who is responsible for the performance of the duties, functions and powers of the office.

(2) The Governor shall appoint the ombudsman, who holds office at the pleasure of the Governor.

(3) The ombudsman shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) The ombudsman shall:

(a) Investigate and resolve complaints received under section 3 of this 2007 Act that are made by or for members, by:

(A) Issuing recommendations regarding further action; and

(B) Attempting to facilitate a settlement of the complaint in a manner acceptable to both the member and the administrator.

(b) Serve as an advocate for a member whenever the member or a physician or other person serving the member is concerned about access to, quality of or limitations on the care or services being provided to the member by an administrator.

(c) Ensure that members are informed of the availability of health care ombudsman services.

(5) The ombudsman shall report quarterly to the Governor. The report shall be available to the public and shall include but not be limited to:

(a) A summary of each complaint recorded by the office and identification of the administrator against whom the complaint was made;

(b) A summary of the services provided by the office with respect to each complaint; and

(c) Recommendations for modifications to the contracts between the department and fully capitated health plans or prepaid managed care health services organizations to provide care or services to members under the Oregon Health Plan.

(6) In conducting an investigation, the ombudsman shall have the power to issue subpoenas, compel testimony and command the production of documents.

(7) The ombudsman may hire staff to carry out the duties, functions and powers of the office. However, to the maximum extent possible consistent with the proper performance of the duties of the office, the ombudsman shall employ unpaid volunteers to carry out such duties, functions and powers.

(8) The ombudsman, any agent or designee of the ombudsman and any immediate family member of the ombudsman shall be free of any conflict of interest. As used in this sub-

section, "conflict of interest" means any present employment by or agency relationship with a fully capitated health plan, a prepaid managed care health services organization or the department, any present financial interest in such entities, any fiduciary relationship to such entities or any direct involvement in any licensing or certification of such entities.

(9) The ombudsman may adopt rules necessary to carry out the provisions of sections 2 to 6 of this 2007 Act.

SECTION 5. (1) All agencies of state government, as defined in ORS 174.111, and fully capitated health plans, prepaid managed care health services organizations and health care providers shall assist the Health Care Ombudsman in the performance of the duties of the office of Health Care Ombudsman and shall furnish such information and advice as the ombudsman considers necessary to perform the duties of the office.

(2) Upon written authorization by a member or the member's legal representative, any designee of the ombudsman providing proper identification shall have direct access to any member's records held by or within the control of an administrator or a health care provider and shall be entitled without charge to have photocopies of such records. The administrator or health care provider shall provide access to records within five working days of receiving a written request for access that is accompanied by the member's authorization. Except as otherwise provided in this section, nothing in ORS 192.518 to 192.526 shall be interpreted to limit access to records by the ombudsman or the ombudsman's designee.

(3) The Office of the Health Care Ombudsman shall be considered to be a health oversight agency for purposes of 45 C.F.R. 164.501 and shall have access to records of any administrator, public agency or health care provider that are necessary for the investigation and resolution of any member complaint.

(4) Except as provided in subsections (1) to (3) of this section, the ombudsman and all agents or designees of the ombudsman shall be subject to the confidentiality provisions of the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and all federal and state rules implementing the Act.

(5) Upon the ombudsman's request, the Department of Human Services shall investigate a complaint about an action taken by a fully capitated health plan or a prepaid managed care health services organization for any possible violations by such entity of the entity's contract with the department or any possible violations of state or federal laws.

(6) As used in subsection (1) of this section, "assist" means to respond promptly to the ombudsman's or designee's oral and written inquiries, to provide complete and accurate responses to the ombudsman's or designee's written or oral questions about the action taken and to engage in a good faith attempt with the ombudsman or designee to resolve the complaint to the member's satisfaction.

SECTION 6. A person who files a complaint with the Office of the Health Care Ombudsman under sections 2 to 6 of this 2007 Act or who participates in an investigation under sections 2 to 6 of this 2007 Act may not be, as a result of filing the complaint:

(1) Subject to any penalties, sanctions or restrictions imposed by the Department of Human Services;

(2) Subject to any penalties, sanctions or restrictions connected with the person's employment; or

(3) Denied any right, privilege or benefit by the department, a fully capitated health plan or a prepaid managed care health services organization on account of the complaint.

SECTION 7. All contracts entered into by the Department of Human Services for the purpose of administering the Oregon Health Plan shall include a provision stating that the administrator agrees to comply fully with the provisions of sections 2 to 6 of this 2007 Act.

SECTION 8. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect July 1, 2007.