

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 626 - A**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office**Only Impacts on Original or Engrossed
Versions are Considered Official**Prepared by: Kim To
Reviewed by: Laurie Byerly, Linda Ames
Date: 5/13/2013**Measure Description:**

Expands scope and duties of Long Term Care Ombudsman to include adult foster homes, and to address needs of residents of care facilities who have mental illness or developmental disabilities. Renames Long Term Care Advisory Committee as Residential Facilities Advisory Committee and increases committee membership.

Government Unit(s) Affected:

Office of the Long-Term Care Ombudsman, Department of Human Services, Oregon Health Authority

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Summary of Expenditure Impact – Long Term Care Ombudsman:

	2013-15 Biennium	2015-17 Biennium
General Fund		
Personal Services	808,170	1,239,194
Services and Supplies	304,486	466,878
Total Funds	\$1,112,656	\$1,706,072
Positions	8	8
FTE	5.63	7.50

Analysis:

Senate Bill 626 A–Engrossed takes effect on January 1, 2014 and expands the duties of the office of the Long Term Care Ombudsman (LTCO) to advocate for residents of care facilities who have mental illness or developmental disabilities. The legislation also makes changes to the Long Term Care Advisory Committee, which is responsible for monitoring the Long Term Care Ombudsman Program and producing an annual program report. The bill expands the committee’s scope, renames it the “Residential Facilities Advisory Committee”, and increases the committee’s membership from seven to nine members.

The Long Term Care Ombudsman estimates there are approximately 7,600 persons living in 1,816 licensed adult foster homes and group homes in Oregon serving persons with developmental disabilities and mental illness. Based on the Ombudsman’s experience in supervising over 200 volunteers visiting over 2,320 licensed long term care facilities, the LTCO estimates that the expanded responsibilities will require additional staff (six full-time Deputies, one half-time Volunteer Recruiter, and one Administrative Specialist) to work with approximately 125 new certified volunteers. The associated fiscal impact for this work is anticipated to be \$1,112,656 General Fund, and eight positions (5.63 FTE) for the 18 months of 2013-15 biennium; and \$1,706,072 General Fund, and eight positions (7.50 FTE) for the 2015-17 biennium.

LTOC’s fiscal impact includes one-time (equipment, training) and ongoing (rent, travel) costs associated with almost doubling the agency’s size. In addition, the fiscal addresses costs for the facility poster required under the bill and for per diem/expenses attributable to the two new committee members.

The Department of Human Services (DHS) and the Oregon Health Authority (OHA) are required to provide LTCO, at least quarterly, bed counts for each of the residential facilities under the LTCO's scope of responsibility. This reporting is expected to have little to no fiscal impact on either agency.

The bill changes the current disposition of civil penalties recovered from residential facilities and adult foster homes. Currently, these penalties are deposited into the Quality Care Fund, and can be used by DHS for training, technical assistance, quality improvement initiatives, and licensing activities. Under SB 626-A, the civil penalties associated with residential facilities and adult foster homes that serve persons with mental illness or developmental disabilities would instead go into the Long Term Care Ombudsman Account. Statute allows the LTCO to use funds in this account, which are budgeted with Other Funds expenditure limitation, to carry out any program responsibilities.

This disposition change is roughly estimated to redirect about \$7,500 per month in civil penalties from the Quality Care Fund to the LTCO account, or about \$135,000 in the 2013-15 biennium. The amount associated with civil penalties for mental health providers is unknown. Since the number of, timing of, and cash flow for these civil penalties fluctuate and are somewhat indeterminate, this fiscal impact statement does not identify a specific amount for expenditure in 2013-15. However, once revenues accrue and civil penalty trends solidify, these revenues could be budgeted in future biennia to offset or augment agency General Fund expenditures.

While the change will divert future revenues from the Quality Care Fund, the fiscal impact on DHS programs and expenditures is indeterminate. The fund was created in 2009 to provide training to providers and improve quality of care. However, while some expenditures have been covered by the fund, no consistent spending patterns from the fund have been established. The fund's current balance of about \$1.4 million has been identified by the Legislative Fiscal Office as a potential resource for use within the 2013-15 budget.

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
Vote:	4 - 0 - 1
Yeas:	Knopp, Kruse, Shields, Monnes Anderson
Nays:	0
Exc.:	Steiner Hayward
Prepared By:	Sandy Thiele-Cirka, Administrator
Meeting Dates:	3/19, 4/15

WHAT THE MEASURE DOES: Maintains Long -Term Care Ombudsman (LTCO) name. Expands duties of LTCO to advocate for residents of care facilities who have mental illness or developmental disabilities. Defines “residential facility” to reflect expanded duties of LTCO. Modifies relationship between Oregon Health Authority, Department of Human Services and LTCO’s office. Establishes a nine-member Residential Facilities Advisory Committee (RFAC). Requires RFAC submit quarterly report to LTCO.

ISSUES DISCUSSED:

- Lack of voice of adults with developmental disabilities
- Concern relating to current resources for implementation
- Reporting abuse
- Importance of including adult foster home residents
- Need for independent, conflict-free oversight
- Proposed amendment

EFFECT OF COMMITTEE AMENDMENT: Replaces original measure.

BACKGROUND: The Office of the Long-Term Care Ombudsman is an independent state agency that serves long-term care facility residents through complaint investigation, resolution and advocacy for improvement in resident care. The mission of the Office of the Long-Term Care Ombudsman is to enhance the quality of life, improve the level of care, protect the individual's rights and promote the dignity of each Oregon citizen residing in a long-term care facility.

It has been reported there are approximately 6,000 individuals with developmental or intellectual disabilities living in close to 1,000 licensed adult foster homes and 665 group homes in Oregon. An additional 2,500 individuals with mental or behavioral health disabilities are served in approximately 600 residential treatment homes and facilities. Most of these homes and facilities are quite small, with only 3-4 residents and they are scattered throughout Oregon.

4/19/2013 11:20:00 AM

This summary has not been adopted or officially endorsed by action of the committee.

A-Engrossed Senate Bill 626

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by Senator MONNES ANDERSON; Senators DINGFELDER, KRUSE, ROBLAN, Representatives GELSER, GORSEK

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.

[Renames Long Term Care Ombudsman as Ombudsman for Vulnerable Adults and renames office of Long Term Care Ombudsman as office of Ombudsman for Vulnerable Adults.] Expands duties of **Long Term Care Ombudsman** *[office]* to address needs of residents of care facilities who have mental illness or developmental disabilities. Expands scope of ombudsman duties to include adult foster homes. *[Requires ombudsman to appoint three chief deputy ombudsmen to serve each constituency.]*

Renames Long Term Care Advisory Committee as Residential Facilities *[for Vulnerable Adults]* Advisory Committee and increases committee membership.

[Renames Long Term Care Ombudsman Account as Ombudsman for Vulnerable Adults Account.]

A BILL FOR AN ACT

1
2 Relating to ombudsman to serve vulnerable adults in residential care; amending ORS 410.550,
3 441.100, 441.103, 441.109, 441.113, 441.117, 441.121, 441.124, 441.127, 441.131, 441.133, 441.137,
4 441.142, 441.146, 441.153, 443.455 and 443.825; and repealing ORS 441.147.

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

6 **SECTION 1.** ORS 441.100 is amended to read:

7 441.100. **As used in ORS 441.100 to 441.153:**

8 *[(1) "Administrative action" means any action or decision made by an owner, employee or agent*
9 *of a long term care facility or by a public agency that affects the services to residents.]*

10 *[(2) "Committee" means the Long Term Care Advisory Committee.]*

11 *[(3)]* **(1)** "Designee" means an individual appointed by the Long Term Care Ombudsman to serve
12 as a representative in order to carry out the purpose of ORS 441.100 to 441.153.

13 *[(4) "Long term care facility" means any licensed skilled nursing facility intermediate care facility,*
14 *as defined in rules adopted under ORS 442.015, adult foster homes with residents over 60 years of age*
15 *and residential care facility as defined in ORS 443.400.]*

16 **(2) "Residential facility" includes a:**

17 **(a) Long term care facility;**

18 **(b) Residential facility as defined in ORS 443.400, excluding a:**

19 **(A) Facility housing persons committed under ORS 161.327; and**

20 **(B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treat-**
21 **ment;**

22 **(c) Licensed adult foster home as defined in ORS 443.705; and**

23 **(d) Developmental disability child foster home, as defined in ORS 443.830, that is certified**

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 **by the Department of Human Services.**

2 **SECTION 2.** ORS 441.103 is amended to read:

3 441.103. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care
4 Ombudsman shall function separately and independently from any other state agency. The Governor
5 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees
6 nominated by the [*Long Term Care*] **Residential Facilities** Advisory Committee established under
7 ORS 441.137. **The appointment of the Long Term Care Ombudsman is subject to Senate con-**
8 **firmation under ORS 171.562 and 171.565.** [*Vacancies*] **A vacancy** shall be filled within 60 days in
9 the same manner as **an appointment is made.** [*appointments are made, subject to Senate confirma-*
10 *tion under ORS 171.562 and 171.565.*]

11 (2) The Long Term Care Ombudsman may be removed for just cause, upon recommendation to
12 the Governor by the [*Long Term Care*] **Residential Facilities** Advisory Committee.

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

- 15 (a) The [*field*] **fields** of aging, **mental health or developmental disabilities**;
- 16 (b) **Physical or behavioral** health care;
- 17 (c) Working with community programs;
- 18 (d) Strong understanding of long term care issues, both regulatory and policy;
- 19 (e) Working with health care providers;
- 20 (f) Working with and involvement in volunteer programs; and
- 21 (g) Administrative and managerial experience.

22 **SECTION 3.** ORS 441.109 is amended to read:

23 441.109. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

24 [(1)] (a) Investigate and resolve complaints made by or for residents of [*long term care*] **resi-**
25 **dential** facilities about administrative actions that may adversely affect their health, safety, welfare
26 or rights, including subpoenaing any person to appear, give sworn testimony or to produce docu-
27 mentary or other evidence that is reasonably material to any matter under investigation.

28 [(2)] (b) Undertake, participate in or cooperate with persons and agencies in such conferences,
29 inquiries, meetings or studies as may lead to improvements in the functioning of [*long term care*]
30 **residential** facilities.

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

33 [(4)] (d) Provide information to public agencies about the problems of residents of [*long term*
34 *care*] **residential** facilities.

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

37 [(6)] (f) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of oper-
38 ation.

39 [(7)] (g) Collaborate with the **Oregon Health Authority, the** Department of Human Services,
40 [*and*] the Nursing Home Administrators Board **and any other appropriate agencies and organ-**
41 **izations** to establish a statewide system to collect and analyze information on complaints and con-
42 ditions in [*long term care*] **residential** facilities for the purpose of publicizing improvements and
43 resolving significant problems.

44 [(8)] (h) Appoint designees to serve as local representatives of the office in various districts of
45 the state and regularly monitor their functions.

1 [(9)] (i) Specify qualifications and duties of designees.

2 [(10)] (j) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with
3 the **Residential Facilities Advisory** Committee.

4 [(11)] (k) Provide periodically, or at least [*twice*] annually, a report to the Governor, **authority**,
5 department and [*the*] Legislative Assembly.

6 [(12)] (L) Prepare necessary reports with the assistance of the **authority and the** department.

7 **(2) At least quarterly, the Oregon Health Authority and the Department of Human Ser-**
8 **VICES shall provide the Long Term Care Ombudsman with a list of the number of licensed**
9 **or certified beds in each residential facility for which the ombudsman has responsibilities**
10 **under this section.**

11 **(3) As used in this section, “administrative action” means any action or decision made**
12 **by an owner, employee or agent of a residential facility or by a public agency that affects the**
13 **services to residents of the facility.**

14 **SECTION 4.** ORS 441.113 is amended to read:

15 441.113. The Long Term Care Ombudsman shall establish procedures to maintain the
16 confidentiality of the records and files of residents of [*long term care*] **residential** facilities. These
17 procedures must meet the following requirements:

18 (1) The ombudsman or designee [*shall*] **may** not disclose, except to state agencies, the identity
19 of any resident unless the complainant or the resident, or the legal representative of either, consents
20 in writing to the disclosure and specifies to whom the disclosure may be made.

21 (2) The identity of any complainant or resident on whose behalf a complaint is made, or indi-
22 vidual providing information on behalf of the **complainant or the** resident [*or complainant*], shall
23 be confidential. If the complaint becomes the subject of judicial proceedings, the investigative in-
24 formation held by the ombudsman or designee shall be disclosed for the purpose of the proceedings
25 if requested by the court.

26 **SECTION 5.** ORS 441.117 is amended to read:

27 441.117. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
28 into [*long term care*] **residential** facilities at any time considered necessary and reasonable by the
29 ombudsman or the designee for the purpose of:

- 30 (a) Investigating and resolving complaints **made** by residents or **made** on their behalf;
- 31 (b) Interviewing residents, with their consent, in private;
- 32 (c) Offering the services of the ombudsman or **the** designee to any resident, in private;
- 33 (d) Interviewing employees or agents of the [*long term care*] facility;
- 34 (e) Consulting regularly with the facility administration; and
- 35 (f) Providing services authorized by law or by rule.

36 (2) The Long Term Care ombudsman shall have access to any resident’s records, and to records
37 of any public agency necessary to the duties of the [*office*] **ombudsman**, including records on patient
38 abuse complaints made pursuant to ORS **430.735 to 430.765**, 441.630 to 441.680 and 441.995. [*Nothing*
39 *contained in*] **The provisions of** ORS 192.553 to 192.581 [*is*] **are not** intended to limit the access of
40 the Long Term Care Ombudsman to medical records of residents of [*long term care*] **residential** fa-
41 cilities. Designees may have access to individual resident’s records, including medical records as
42 authorized by the resident or resident’s legal representative, if needed to investigate a complaint.

43 (3) Entry and investigation authorized by this section shall be done in a manner that does not
44 disrupt significantly the providing of nursing, **residential** or other personal care **or treatment** to
45 residents.

1 (4) The ombudsman or the designee must show identification to the person in charge of the fa-
2 cility. The resident shall have the right to refuse to communicate with the ombudsman or **the**
3 designee. The refusal shall be made directly to the ombudsman or **the** designee and not through
4 an intermediary.

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

7 **SECTION 6.** ORS 441.121 is amended to read:

8 441.121. (1) Following an investigation, the **Long Term Care** Ombudsman or the designee shall
9 report opinions or recommendations to the party or parties affected [*thereby*] and, **if appropriate,**
10 shall attempt to resolve the complaint[, *using, whenever possible,*] **using** informal techniques of me-
11 diation, conciliation and persuasion. Complaints of conditions adversely affecting residents of [*long*
12 *term care*] **residential** facilities, or [*those*] **complaints of conditions** threatening the safety or
13 well-being of residents that cannot be resolved in the manner described in this section, shall be re-
14 ferred to an appropriate state agency.

15 (2) Programs that promote the safety or emotional or physical well-being of [*long term care*]
16 residents **of residential facilities** shall be promoted and publicized by the ombudsman and the
17 designees.

18 **SECTION 7.** ORS 441.124 is amended to read:

19 441.124. (1) The Long Term Care Ombudsman shall prepare and distribute to each [*long term*
20 *care*] **residential** facility in this state a written notice describing the procedures to follow in making
21 a complaint, including the address and telephone number of the ombudsman and local designee, if
22 any, **and a poster describing the Long Term Care Ombudsman Program and providing contact**
23 **information.**

24 (2) The administrator of each [*long term care*] **residential** facility shall post the written notice
25 **and poster** required by this section in conspicuous places in the facility in accordance with proce-
26 dures provided by the ombudsman and shall give [*such*] **the written** notice to [*any*] **each** resident
27 and legally appointed guardian, if any.

28 **SECTION 8.** ORS 441.127 is amended to read:

29 441.127. (1) Any employee or agent of [*the long term care*] **a residential** facility acting in good
30 faith in discussing [*patient*] **resident** care pursuant to ORS 441.117 shall have immunity from any
31 civil liability[,] that might otherwise be incurred or imposed with respect to the making of such re-
32 port.

33 (2) Any employee or agent who makes a report pursuant to ORS 441.117 [*shall*] **may** not be
34 subjected to any retaliation by any official or other employee of a [*long term care*] **residential** fa-
35 cility solely for making a report, including but not limited to restriction of otherwise lawful access
36 to the facility or to any resident [*thereof*] **of the facility**, or, if an employee, to dismissal or
37 harassment.

38 (3) The **Long Term Care** Ombudsman or the designee acting in good faith in discussing
39 [*patient*] **resident** care pursuant to ORS 441.117 shall have immunity from any civil liability, that
40 might otherwise be incurred or imposed with respect to the discussion.

41 **SECTION 9.** ORS 441.131 is amended to read:

42 441.131. (1) The appointments of designees shall be made in consultation with a local screening
43 committee [*which*] **that** may consist of but not be limited to persons representing:

44 (a) The area agency on aging.

45 (b) The local office of the Department of Human Services.

- 1 (c) The local health department.
- 2 (d) Senior citizens groups in the area.
- 3 (e) [*Long term care*] **Residential** facilities in the area.
- 4 (f) Local elected officials.
- 5 **(g) The community mental health program director or local mental health authority.**
- 6 **(h) The community developmental disabilities program director.**
- 7 **(i) Representatives from the Oregon Health Authority.**

8 (2) To be appointed as a designee, a person must complete six days of initial training and attend
9 quarterly training sessions [*which*] **that** are approved by the Long Term Care Ombudsman and
10 [*which*] **that** shall be coordinated and funded by the Department of Human Services **and the Oregon**
11 **Health Authority**, subject to the availability of funds [*therefor*]. Local screening committees shall
12 be appointed by and serve at the pleasure of the ombudsman.

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

17 (4) The qualifications of designees shall include experience with [*long term care*] **residential** fa-
18 cilities or residents [*thereof*] or potential residents **of residential facilities, and** [*including*] the
19 ability to communicate well, to understand laws, rules and regulations, and to be assertive, yet ob-
20 jective.

21 (5) **Applicants who have** experience in either social service, **mental health, developmental**
22 **disability services**, gerontology, nursing or paralegal work [*shall be preferred*] **shall be given**
23 **preference in the appointment of designees.**

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

26 (a) Promote rapport and trust between the residents[,] **and** staff of the [*nursing home and nurs-*
27 *ing home ombudsman program*] **residential facilities and Long Term Care Ombudsman;**

28 (b) Assist [*nursing home*] residents with participating more actively in determining the delivery
29 of services [*in long term care*] **at the** facilities;

30 (c) Serve as an educational resource;

31 (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate
32 agency; and

33 (e) [*Assure*] **Ensure** equitable resolution of problems.

34 (7) The duties of the designees are to:

35 (a) Visit each assigned [*long term care*] **residential** facility on a regular basis:

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

37 (B) Review, with a specified staff member, any problems or concerns [*which*] **that** need to be
38 considered.

39 (C) Visit individual residents and resident councils.

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

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

42 (d) Keep residents and [*long term care*] staff informed of the Long Term Care Ombudsman Pro-
43 gram.

44 (e) Periodically review the patients' bill of rights **prescribed in ORS 441.605, 441.610 and**
45 **441.612** with residents, families, guardians, administrators and staff **of residential facilities.**

1 (f) Perform other related duties as specified.

2 **SECTION 10.** ORS 441.133 is amended to read:

3 441.133. Nothing in ORS 441.100 to 441.153 shall affect the right of residents of a [*long term*
4 *care*] **residential** facility to see visitors of their choice.

5 **SECTION 11.** ORS 441.137 is amended to read:

6 441.137. (1) There is established a [*Long Term Care*] **Residential Facilities** Advisory Committee
7 of [*seven*] **nine** members to be appointed in the following manner:

8 (a) One person appointed by the Speaker of the House of Representatives;

9 (b) One person appointed by the President of the Senate;

10 (c) One person appointed by the House Minority Leader;

11 (d) One person appointed by the Senate Minority Leader;

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

16 (f) [*One person*] **Two persons** appointed by the Governor.

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

19 (3) The term of office of each member is four years. Before the expiration of the term of a
20 member, the appointing authority shall appoint a successor whose term begins on July 1 next fol-
21 lowing. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing
22 authority shall make an appointment to become immediately effective for the unexpired term.

23 (4) The members of the committee must be [*citizens*] **residents** of this state who are broadly
24 representative, to the extent possible, of persons [*over 55 years of age*] **residing in residential fa-**
25 **ilities**, including [*persons with disabilities and*] members of racial and ethnic minorities, who have
26 knowledge and interest in the problems of [*the elderly*] **persons residing in residential facilities**,
27 and **who** are representative of all areas of [*the*] **this** state[. *At least five members shall be at least*
28 *60 years of age.*] **and the demographics of groups served by the Long Term Care Ombudsman.**

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

32 (6) **The committee shall select one of its members as chairperson and another as vice**
33 **chairperson, for such terms and with duties and powers necessary for the performance of**
34 **the functions of such offices as the committee determines.**

35 (7) **A majority of the members of the committee constitutes a quorum for the transaction**
36 **of business. Decisions may be made by a majority of the quorum.**

37 (8) **The committee shall meet at least once each month at a place, day and hour deter-**
38 **mined by the committee. The committee also shall meet at other times and places specified**
39 **by the call of the chairperson or of a majority of the members of the committee. The com-**
40 **mittee shall confer each month with the Long Term Care Ombudsman. All meetings are**
41 **subject to ORS 192.610 to 192.690.**

42 (9) **A member of the committee is entitled to compensation and expenses as provided in**
43 **ORS 292.495.**

44 **SECTION 12.** ORS 441.142 is amended to read:

45 441.142. The [*Long Term Care*] **Residential Facilities** Advisory Committee shall:

1 (1) Monitor the Long Term Care Ombudsman Program.

2 (2) Advise the Governor and the Legislative Assembly on the Long Term Care Ombudsman
3 Program.

4 (3) Nominate, after interviews and according to prescribed criteria, three persons to fill the
5 [office of] Long Term Care Ombudsman **position or to fill a vacancy in the position.**

6 **SECTION 13.** ORS 441.146 is amended to read:

7 441.146. (1) A [*long term care*] **residential** facility that files a complaint against a designee ap-
8 pointed under ORS 441.131 and objects to the action of the Long Term Care Ombudsman in resolving
9 the complaint may appeal the ombudsman's action to a panel of the [*Long Term Care*] **Residential**
10 **Facilities** Advisory Committee.

11 (2) The committee on its own motion may review any action by the ombudsman appealable under
12 this section. The review shall provide an opportunity for written and oral presentation by the [*long*
13 *term care*] **residential** facility and the ombudsman. The committee shall issue its findings and any
14 instructions to the ombudsman in written form consistent with the federal Older Americans Act **or**
15 **other applicable federal law.**

16 (3) If the committee disagrees with the action of the ombudsman, the committee may refer the
17 resolution back to the ombudsman with instructions consistent with the federal Older Americans
18 Act **or other applicable federal law** to conform the ombudsman's action in the matter to the rec-
19 ommendations of the committee.

20 **SECTION 14.** ORS 441.153 is amended to read:

21 441.153. The Long Term Care Ombudsman Account is established **in the State Treasury**, sep-
22 arate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other
23 grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care
24 Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for
25 carrying out the responsibilities of the Long Term Care Ombudsman.

26 **SECTION 15.** ORS 443.455 is amended to read:

27 443.455. (1) **Except as provided in subsection (5) of this section**, for purposes of imposing
28 civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS
29 441.705 to 441.745.

30 (2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential
31 care facilities, residential training facilities and residential training homes that are not in compli-
32 ance with ORS 443.400 to 443.455.

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

36 (4) If the department or authority investigates and makes a finding of abuse arising from delib-
37 erate or other than accidental action or inaction that is likely to cause a negative outcome by a
38 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the
39 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose
40 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed
41 \$15,000 in any 90-day period. As used in this subsection:

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

43 (b) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365
44 and 163.375.

45 (c) "Serious injury" means physical injury that creates a substantial risk of death or that causes

1 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
2 ment of the function of any bodily organ.

3 (d) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited
4 to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and
5 sexual harassment.

6 **(5) Civil penalties recovered from a residential training facility, residential training home,
7 residential treatment facility or residential treatment home shall be deposited in the Long
8 Term Care Ombudsman Account established in ORS 441.153.**

9 **SECTION 16.** 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
12 providing residential care to persons with physical disabilities.**

13 (2) **In the Long Term Care Ombudsman Account established in ORS 441.153 if paid by an
14 adult foster home providing care to persons with mental illness or developmental
15 disabilities.**

16 **SECTION 17.** ORS 410.550 is amended to read:

17 410.550. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is
18 created, to consist of 12 members. Appointed members shall be residents of the State of Oregon and
19 representative of the geographic locations of all long term care facilities and community-based care
20 facilities in this state. The members shall include:

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

22 (b) A representative of the Governor's Commission on Senior Services, to be appointed by the
23 commission;

24 (c) A representative of the Oregon Disabilities Commission, to be appointed by the commission;

25 (d) A representative of the Oregon Association of Area Agencies on Aging and Disabilities, to
26 be appointed by the Governor;

27 (e) A representative of a senior or disabilities advocacy organization or an individual who ad-
28 vocates on behalf of seniors or persons with disabilities, to be appointed by the Governor;

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

32 (g) Two consumers of [*long term care*] **residential** facilities, **as defined in ORS 441.100**, or
33 community-based care facilities or family members of such residents, to be appointed by the Speaker
34 of the House of Representatives;

35 (h) A director of nurses of an Oregon long term care facility who has practiced in this state in
36 long term care for three years preceding appointment, to be appointed by the Speaker of the House
37 of Representatives;

38 (i) A representative of an assisted living facility or a residential care facility, to be appointed
39 by the President of the Senate;

40 (j) A representative of an adult foster home, to be appointed by the President of the Senate; and

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

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

44 (3) Members of the council shall receive no compensation for their services but unpaid volun-
45 teers not otherwise compensated shall be allowed actual and necessary travel expenses incurred in

1 the performance of their duties.

2 (4) The council shall:

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

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

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

8 (d) Act in an advisory capacity to the department on matters pertaining to quality of long term
9 care facilities and community-based care facilities and reimbursement for long term care services
10 and community-based care services.

11 **SECTION 18. ORS 441.147 is repealed.**

12
