

Senate Bill 58

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Long-Term Care Ombudsman)

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**.

Modifies duties and authority of Long Term Care Ombudsman. Renames Residential Facilities Advisory Committee as Residential Ombudsman and Public Guardianship Advisory Board.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Long Term Care Ombudsman; amending ORS 125.678, 183.458, 441.403, 441.406,
3 441.408, 441.411, 441.413, 441.416, 441.417 and 441.418; and declaring an emergency.

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

5 **SECTION 1.** ORS 183.458 is amended to read:

6 183.458. (1) Notwithstanding any other provision of law, in any contested case hearing before a
7 state agency involving child support, public assistance as defined in ORS 411.010, medical assistance
8 as defined in ORS 414.025 or the right to be free from potentially unusual or hazardous treatment
9 procedures under ORS 426.385 (3), a party may be represented by any of the following persons:

10 (a) An attorney licensed to practice law in any state who is an employee of or contracts with
11 a nonprofit legal services program that receives funding pursuant to ORS 9.572.

12 (b) An authorized representative who is an employee of a nonprofit legal services program that
13 receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an
14 attorney also employed by a legal services program.

15 (c) An authorized representative who is an employee of the system described in ORS 192.517 (1).
16 The authorized representative must be supervised by an attorney also employed by the system.

17 (2) In any contested case hearing before a state agency involving child support, a party may be
18 represented by a law student who is:

19 (a) Handling the child support matter as part of a law school clinical program in which the
20 student is enrolled; and

21 (b) Supervised by an attorney employed by the program.

22 (3) In any contested case hearing before a state agency involving an applicant for or recipient
23 of medical assistance, the claimant may be represented by a relative, friend or any other person of
24 the claimant's choosing.

25 **(4) In any contested case hearing before a state agency involving a resident of a resi-**
26 **dential facility, as defined in ORS 441.402, the resident may be represented by the Long Term**
27 **Care Ombudsman or a designee of the ombudsman.**

28 [(4)] (5) A person authorized to represent a party under this section may present evidence in the
29 proceeding, examine and cross-examine witnesses and present factual and legal arguments in the
30 proceeding.

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 **SECTION 2.** ORS 441.403 is amended to read:

2 441.403. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care
3 Ombudsman shall function separately and independently from any other state agency. The Governor
4 shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees
5 nominated by the [*Residential Facilities Advisory Committee*] **Residential Ombudsman and Public**
6 **Guardianship Advisory Board** established under ORS 441.416. The appointment of the Long Term
7 Care Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565. A vacancy shall
8 be filled within 60 days in the same manner as an appointment is made.

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

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

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

21 **SECTION 3.** ORS 441.406 is amended to read:

22 441.406. (1) The office of the Long Term Care Ombudsman shall carry out the following duties:

23 (a) Investigate and resolve complaints made by or for residents of residential facilities about
24 administrative actions that may adversely affect their health, safety, welfare or rights, including
25 subpoenaing any person to appear, give sworn testimony or to produce documentary or other evi-
26 dence that is reasonably material to any matter under investigation.

27 (b) Undertake, participate in or cooperate with persons and agencies in such conferences, in-
28 quiries, meetings or studies as may lead to improvements in the functioning of residential facilities.

29 (c) Monitor the development and implementation of federal, state and local laws, regulations and
30 policies that relate to residential facilities in this state.

31 (d) Provide information to public agencies about the problems of residents of residential facili-
32 ties.

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

35 (f) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.

36 (g) Collaborate with the Oregon Health Authority, the Department of Human Services, the
37 Nursing Home Administrators Board and any other appropriate agencies and organizations to es-
38 tablish a statewide system to collect and analyze information on complaints and conditions in resi-
39 dential facilities for the purpose of publicizing improvements and resolving significant problems.

40 (h)(A) Identify and coordinate programs, services and other assistance for persons receiving
41 public guardian and conservator services under ORS 125.675 to 125.687, that are available statewide;

42 (B) Contract with qualified individuals and entities to provide programs, services and assistance
43 to persons receiving public guardian and conservator services under ORS 125.675 to 125.687 who are
44 located in areas of this state where such programs, services and other assistance are inadequate or
45 nonexistent; and

1 (C) Contract with the state protection and advocacy system described in ORS 192.517 (1) to
 2 provide services and assistance to persons who are prospective or current residents of a mental
 3 health treatment facility or of a residential facility for individuals with developmental disabilities
 4 when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

5 (i) Appoint designees to serve as local representatives of the office in various districts of the
 6 state and regularly monitor their functions.

7 (j) Specify qualifications and duties of designees.

8 (k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the
 9 *[Residential Facilities Advisory Committee]* **Residential Ombudsman and Public Guardianship**
 10 **Advisory Board.**

11 (L) Provide periodically, or at least annually, a report to the Governor, authority, department
 12 and Legislative Assembly.

13 (m) Prepare necessary reports with the assistance of the authority and the department.

14 (n) Supervise, monitor, advise and support the Oregon Public Guardian and Conservator ap-
 15 pointed under ORS 125.678.

16 (2) At least quarterly, the Oregon Health Authority and the Department of Human Services, **and**
 17 **their designees**, shall provide the **office of the** Long Term Care Ombudsman with a list of the
 18 number of licensed or certified beds in each residential facility for which the ombudsman has re-
 19 sponsibilities under this section.

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

23 **SECTION 4.** ORS 441.408 is amended to read:

24 441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
 25 into residential facilities at any time considered necessary and reasonable by the ombudsman or the
 26 designee for the purpose of:

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

33 (2) The Long Term Care Ombudsman shall have access to any resident’s records, and to records
 34 of any public agency necessary to the duties of the ombudsman, including records on *[patient]* **resi-**
 35 **dent** abuse complaints made pursuant to ORS **124.050 to 124.095**, 430.735 to 430.765, 441.630 to
 36 441.680 and 441.995. The provisions of ORS 192.553 to 192.581 are not intended to limit the access
 37 of the Long Term Care Ombudsman to medical records of residents of residential facilities. **If**
 38 **needed to investigate a complaint**, designees **of the ombudsman** *[may]* **shall** have access to in-
 39 dividual resident’s records, including medical records as authorized by the resident or **the** resident’s
 40 legal representative[]], *if needed to investigate a complaint]* **if the resident is unable to communicate**
 41 **the authorization.**

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

45 (4) The ombudsman or the designee must show identification to the person in charge of the fa-

1 cility. The resident shall have the right to refuse to communicate with the ombudsman or the
 2 designee. The refusal shall be made directly to the ombudsman or the designee and not through an
 3 intermediary.

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

6 **SECTION 5.** ORS 441.413 is amended to read:

7 441.413. (1) The *[appointments of designees shall be made]* **Long Term Care Ombudsman shall**
 8 **appoint designees** in consultation with *[a]* local screening *[committee]* **committees** that may consist
 9 of but not be limited to persons representing:

- 10 (a) The area agency on aging.
- 11 (b) The local office of the Department of Human Services.
- 12 (c) The local health department.
- 13 (d) Senior citizens groups in the area.
- 14 (e) Residential facilities in the area.
- 15 (f) Local elected officials.
- 16 (g) The community mental health program director or local mental health authority.
- 17 (h) The community developmental disabilities program director.
- 18 (i) Representatives from the Oregon Health Authority.

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

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

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

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

35 (6) The contract shall include statements that the purpose of the **office of the** Long Term Care
 36 Ombudsman *[Program]* is to:

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

- 1 (a) Visit each assigned residential facility on a regular basis:
- 2 (A) Upon arrival and departure, inform a specified staff member.
- 3 (B) Review, with a specified staff member, any problems or concerns that need to be considered.
- 4 (C) Visit individual residents and resident councils.
- 5 (b) Maintain liaison with appropriate agencies and the **office of the** Long Term Care Ombuds-
- 6 man.
- 7 (c) Report, in writing, monthly to the **office of the** Long Term Care Ombudsman.
- 8 (d) Keep residents and staff informed of the **programs administered by the office of the** Long
- 9 Term Care Ombudsman [*Program*].
- 10 (e) Periodically review the [*patients' bill of*] rights prescribed in ORS **427.107, 430.210, 441.605,**
- 11 **441.610 and 441.612, and any other applicable rights to services,** with residents, families, guardi-
- 12 ans, administrators and staff of residential facilities.
- 13 (f) Perform other related duties as specified.

14 **SECTION 6.** ORS 441.416 is amended to read:

15 441.416. (1) There is established a [*Residential Facilities Advisory Committee*] **Residential Om-**

16 **budsman and Public Guardianship Advisory Board** of 11 members to be appointed in the follow-

17 ing manner:

- 18 (a) One person appointed by the Speaker of the House of Representatives;
- 19 (b) One person appointed by the President of the Senate;
- 20 (c) One person appointed by the House Minority Leader;
- 21 (d) One person appointed by the Senate Minority Leader;
- 22 (e) One person appointed by the Governor from each list of four names submitted by organiza-
- 23 tions for seniors, organizations for persons with mental illness and the Oregon Council on Develop-
- 24 mental Disabilities; and

25 (f) Four persons appointed by the Governor, two of whom must have expertise in the provision

26 of guardianship, conservatorship and other fiduciary services for persons with inadequate resources.

27 (2) Members described in subsection (1)(e) and (f) of this section are subject to confirmation by

28 the Senate under ORS 171.562 and 171.565.

29 (3) The term of office of each member is four years. Before the expiration of the term of a

30 member, the appointing authority shall appoint a successor whose term begins on July 1 next fol-

31 lowing. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing

32 authority shall make an appointment to become immediately effective for the unexpired term.

33 (4) The members of the [*committee*] **board** must be residents of this state who are broadly rep-

34 resentative, to the extent possible, of persons residing in residential facilities, including members

35 of racial and ethnic minorities, who have knowledge and interest in the problems of persons residing

36 in residential facilities, and who are representative of all areas of this state and the demographics

37 of groups served by the Long Term Care Ombudsman.

38 (5) A member of the [*committee*] **board** may not have a financial or fiduciary interest in resi-

39 dential facilities or service providers, or involvement in the licensing or certification of residential

40 facilities or service providers.

41 (6) The [*committee*] **board** 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 the func-

43 tions of such offices as the [*committee*] **board** determines.

44 (7) A majority of the members of the [*committee*] **board** constitutes a quorum for the transaction

45 of business. Decisions may be made by a majority of the quorum.

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

6 (9) A member of the [committee] **board** is entitled to compensation and expenses as provided in
 7 ORS 292.495.

8 **SECTION 7.** ORS 441.417 is amended to read:

9 441.417. The [Residential Facilities Advisory Committee] **Residential Ombudsman and Public**
 10 **Guardianship Advisory Board** shall:

11 (1) Monitor the **programs administered by the office of the** Long Term Care Ombudsman
 12 [Program].

13 (2) Advise the Governor and the Legislative Assembly on the **programs administered by the**
 14 **office of the** Long Term Care Ombudsman [Program].

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

17 **SECTION 8.** ORS 441.418 is amended to read:

18 441.418. (1) A residential facility that files a complaint against a designee appointed under ORS
 19 441.413 and objects to the action of the Long Term Care Ombudsman in resolving the complaint may
 20 appeal the ombudsman's action to a panel of the [Residential Facilities Advisory Committee] **Resi-**
 21 **dential Ombudsman and Public Guardianship Advisory Board**.

22 (2) The [committee] **board** 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 presen-
 24 tation by the residential facility and the ombudsman. The [committee] **board** shall issue its findings
 25 and any instructions to the ombudsman in written form consistent with the federal Older Americans
 26 Act or other applicable federal law.

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

31 **SECTION 9.** ORS 125.678 is amended to read:

32 125.678. (1) The Long Term Care Ombudsman appointed under ORS 441.403, in consultation with
 33 the [Residential Facilities Advisory Committee] **Residential Ombudsman and Public Guardianship**
 34 **Advisory Board**, shall appoint the Oregon Public Guardian and Conservator in the office of the
 35 Long Term Care Ombudsman for a four-year term. The Oregon Public Guardian and Conservator
 36 serves at the pleasure of the Long Term Care Ombudsman and may be removed by the Long Term
 37 Care Ombudsman for good cause. If there is a vacancy for any cause, the Long Term Care Om-
 38 budsman shall make an appointment within 60 days. The Oregon Public Guardian and Conservator
 39 shall receive a salary as fixed by the Long Term Care Ombudsman and be reimbursed for all rea-
 40 sonable travel and other expenses incurred in the performance of official duties.

41 (2) The Oregon Public Guardian and Conservator shall be responsible for carrying out the
 42 powers, duties and functions of the Oregon Public Guardian and Conservator pursuant to ORS
 43 125.675 to 125.687, within the office of the Long Term Care Ombudsman, and subject to the direction,
 44 supervision and control of the Long Term Care Ombudsman.

45 (3) The Oregon Public Guardian and Conservator, in consultation with and subject to the ap-

1 proval of the Long Term Care Ombudsman, may:

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

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

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

10 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.687.

11 (4) The Long Term Care Ombudsman may hire or contract with staff to serve in the office of
 12 the Long Term Care Ombudsman as necessary to carry out the powers, duties and functions of the
 13 Long Term Care Ombudsman in supervising, monitoring, advising and supporting the Oregon Public
 14 Guardian and Conservator as required under ORS 441.406.

15 (5) The Oregon Public Guardian and Conservator may delegate the exercise or discharge of any
 16 power, duty or function that is vested in or imposed by law upon the Oregon Public Guardian and
 17 Conservator to a deputy public guardian and conservator, staff person or volunteer hired by or un-
 18 der contract with the Oregon Public Guardian and Conservator as appropriate for the purpose of
 19 conducting an official act in the name of the Oregon Public Guardian and Conservator. The official
 20 act of any person acting in the name of the Oregon Public Guardian and Conservator by the au-
 21 thority of the Oregon Public Guardian and Conservator is an official act of the Oregon Public
 22 Guardian and Conservator.

23 (6) The Oregon Public Guardian and Conservator may solicit and accept gifts, grants and do-
 24 nations from public and private sources for the purpose of carrying out the provisions of ORS
 25 125.675 to 125.687, which moneys shall be deposited in the Long Term Care Ombudsman Account
 26 established under ORS 441.419.

27 **SECTION 10.** ORS 441.411 is amended to read:

28 441.411. (1) The Long Term Care Ombudsman shall prepare and distribute to each residential
 29 facility in this state a written notice describing the procedures to follow in making a complaint,
 30 including the address and telephone number of the ombudsman and local designee, if any, and a
 31 poster describing the **programs administered by the office of the** Long Term Care Ombudsman
 32 [*Program*] and providing contact information.

33 (2) The administrator of each residential facility shall post the written notice and poster re-
 34 quired by this section in conspicuous places in the facility in accordance with procedures provided
 35 by the ombudsman and shall give the written notice to each resident and legally appointed guardian,
 36 if any.

37 **SECTION 11. This 2017 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
 39 **on its passage.**