

LC 4326
2019 Regular Session
PRIORITY
3/21/19 (LHF/ps)

D R A F T

SUMMARY

Establishes Office of Oregon Ombudsmen to provide administrative services and support to Office of the Long Term Care Ombudsman, Office of the Residential Facilities Ombudsman, Office of the Foster Parent Ombudsman, Office of the Foster Child Ombudsman and Office of the Oregon Public Guardian and Conservator. Specifies duties of administrator of Office of Oregon Ombudsmen.

Establishes and specifies duties and powers of Foster Parent Ombudsman and Foster Child Ombudsman. Requires 24-hour hotline telephone number for foster parents to make complaints. Requires Department of Human Services to notify foster parents and foster children of availability of Foster Child Ombudsman and Foster Parent Ombudsman to investigate complaints.

Modifies duties and powers of Long Term Care Ombudsman, Residential Facilities Ombudsman and Oregon Public Guardian and Conservator. Gives ombudsmen access to records necessary for investigating complaints, subject to conditions.

Establishes advisory committees for ombudsman offices and Office of the Oregon Public Guardian and Conservator.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to ombudsmen; creating new provisions; amending ORS 21.007, 125.060, 125.075, 125.678, 125.680, 125.687, 410.550, 418.201, 418.648, 418.992, 419B.005, 441.403, 441.406, 441.408, 441.411, 441.413, 441.416, 441.417, 441.418, 443.380, 443.382, 443.386, 443.396, 443.447, 443.455, 443.738, 443.767, 443.825 and 443.878; repealing ORS 441.419; and declaring an emergency.

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

OFFICE OF OREGON OMBUDSMEN

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 to and made a part of ORS chapter 418.

2 **SECTION 4. (1) As used in this section:**

3 (a) “Foster child” has the meaning given that term in ORS 418.200.

4 (b) “Foster parent” means an individual who has a certificate to
5 operate a foster home issued under ORS 418.635 and who is providing
6 care to a foster child in the individual’s home.

7 (2) The Office of the Foster Child Ombudsman is established. The
8 Governor shall appoint the Foster Child Ombudsman in consultation
9 with the Foster Child Ombudsman Advisory Committee established in
10 section 7 of this 2019 Act. The ombudsman shall be appointed for a
11 four-year term. The Governor shall fill a vacancy in the position no
12 later than 60 days after the vacancy occurs, in the same manner as
13 the appointment is made.

14 (3) The Foster Child Ombudsman shall:

15 (a) Provide foster children and individuals acting on their behalf
16 with information regarding the rights of foster children set forth in
17 ORS 418.201;

18 (b) Investigate any complaint made by or on behalf of a foster child
19 if the allegations contained in the complaint may adversely affect the
20 health, safety, welfare or rights of the foster child;

21 (c) Assist foster children and individuals acting on their behalf in
22 identifying and accessing resources in the community and in con-
23 necting with local service providers;

24 (d) Encourage foster children and individuals acting on behalf of
25 foster children to participate in general studies, conferences, inquiries
26 or meetings related to foster care in this state;

27 (e) Organize or collaborate with others in organizing general
28 studies, conferences, inquiries or meetings to develop recommen-
29 dations for improving the foster care system in this state;

30 (f) Monitor the development and implementation of federal, state
31 and local laws and policies that impact the foster care system in this

1 state;

2 (g) Collect and compile data necessary to prepare the report sub-
3 mitted to the Governor under ORS 182.500 and provide a copy of the
4 report to the Governor's Child Foster Care Advisory Commission es-
5 tablished in ORS 418.041; and

6 (h) Provide information to state and local agencies about problems
7 identified and reforms undertaken in the foster care system in this
8 state and work closely with associations and citizen groups and with
9 the state protection and advocacy system under ORS 192.517.

10 (4)(a) The Foster Child Ombudsman shall:

11 (A) Maintain the hotline telephone number for foster children re-
12 quired by ORS 418.201 (7); and

13 (B) In consultation with the Foster Child Ombudsman Advisory
14 Committee, establish procedures for a foster child or an individual
15 acting on behalf of a foster child to make a complaint about the child's
16 care or about the interaction with individuals or agencies involved in
17 the foster care system.

18 (b)(A) The ombudsman and each designee appointed under section
19 5 of this 2019 Act shall have access to records of any public agency,
20 to the extent permitted by state and federal law, that are necessary
21 to carry out the duties of the ombudsman. The provisions of ORS
22 192.553 to 192.581 are not intended to limit the access of the ombuds-
23 man to a foster child's records, including medical records as author-
24 ized by the foster child or an individual legally authorized to act on
25 behalf of the foster child, if needed to investigate a complaint.

26 (B) The ombudsman and the Department of Human Services shall
27 enter into a confidentiality agreement permitting the ombudsman and
28 each designee to have access to electronic records of the department
29 that are necessary to carry out the duties of the ombudsman, if per-
30 mitted by state and federal law. The agreement must ensure that re-
31 cords obtained by the ombudsman from the department that are

1 **confidential, privileged or otherwise protected from disclosure are not**
2 **further disclosed, except as permitted by state and federal law.**

3 **(c) The ombudsman or a designee shall report to a foster child and**
4 **to an individual that makes a complaint on behalf of the foster child**
5 **the findings of the ombudsman or designee in the investigation of the**
6 **complaint and may make recommendations. If appropriate, the om-**
7 **budsman or designee shall attempt to resolve the complaint using in-**
8 **formal mediation or conflict resolution techniques. Complaints of**
9 **conditions threatening the safety or well-being of a foster child must**
10 **be reported to the department or law enforcement officials.**

11 **(d) A foster child or an individual legally authorized to act on behalf**
12 **of the foster child shall have the right to participate in planning any**
13 **course of action to be taken on behalf of the foster child by the om-**
14 **budsman or the designee.**

15 **(5) A foster child, or an individual acting on behalf of a foster child,**
16 **who makes a complaint to the Foster Child Ombudsman in good faith**
17 **under this section, or who participates in an investigation of a com-**
18 **plaint:**

19 **(a) May not be subjected to a penalty, sanction or restriction, or**
20 **be denied any right, privilege or benefit, on account of making the**
21 **complaint or participating in the investigation of the complaint; and**

22 **(b) Shall have immunity from any civil or criminal liability that**
23 **might otherwise be incurred or imposed on account of making the**
24 **complaint or participating in the investigation of the complaint.**

25 **(6) All state agencies shall cooperate with and assist the Foster**
26 **Child Ombudsman in the performance of the ombudsman's duties and**
27 **functions.**

28 **SECTION 5. (1) The Foster Child Ombudsman may appoint**
29 **designees to serve as representatives of the ombudsman in local com-**
30 **munities. The ombudsman shall regularly monitor the functions of**
31 **designees.**

1 **(2) The appointments of designees by the Foster Child Ombudsman**
2 **shall be made in consultation with a local screening committee that**
3 **may consist of but need not be limited to persons representing:**

4 **(a) The Department of Human Services.**

5 **(b) Elected officials.**

6 **(c) The Oregon Health Authority.**

7 **(d) Foster youth or former foster children.**

8 **(e) Court appointed special advocates.**

9 **(f) Local citizen review boards.**

10 **(3) To be appointed as a designee, a person must complete an initial**
11 **training and attend quarterly training sessions that are approved by**
12 **the Office of the Foster Child Ombudsman.**

13 **(4) Designees must sign a contract with the Office of the Foster**
14 **Child Ombudsman that outlines the scope of their duties.**

15 **(5) The qualifications of designees shall include experience working**
16 **with foster children and the ability to communicate well, to under-**
17 **stand laws, rules and regulations and to be assertive and objective.**

18 **(6) Applicants who have relevant experience in social work, mental**
19 **health, pediatrics or paralegal work shall be given preference in the**
20 **appointment of designees.**

21 **SECTION 6.** **The Foster Child Ombudsman shall establish proce-**
22 **dures to maintain the confidentiality of the records and files of foster**
23 **children. The procedures must meet the following requirements:**

24 **(1) The Foster Child Ombudsman or designee may not disclose, ex-**
25 **cept to law enforcement or state agencies, the identity of any foster**
26 **child, or individual acting on behalf of a foster child, without written**
27 **consent signed by the foster child, the legal representative of the fos-**
28 **ter child or an individual legally authorized to act on behalf of the**
29 **foster child. The written consent must specify to whom the disclosure**
30 **may be made.**

31 **(2) The identity of any foster child or individual providing infor-**

1 mation on behalf of the foster child shall be confidential. If the
2 complaint becomes the subject of judicial proceedings, the investi-
3 gative information held by the Foster Child Ombudsman or designee
4 shall be disclosed for the purpose of the proceedings if requested by
5 the court.

6 (3) The Foster Child Ombudsman and the Foster Parent Ombuds-
7 man may not exchange information concerning a foster child or foster
8 parent without the written consent described in subsection (1) of this
9 section.

10 **SECTION 7.** (1) The Foster Child Ombudsman Advisory Committee
11 is established consisting of five members appointed by the Governor
12 and confirmed by the Senate under ORS 171.562 and 171.565.

13 (2) The term of office for each member is four years. Before the
14 expiration of the term of a member, the Governor shall appoint a
15 successor whose term begins July 1 next following. A member is eli-
16 gible for reappointment. If there is a vacancy for any cause, the Gov-
17 ernor shall make an appointment to become immediately effective for
18 the unexpired term.

19 (3) The members of the committee must:

20 (a) Be residents of this state;

21 (b) Include individuals who are or who represent current or former
22 foster children, including racial and ethnic minorities;

23 (c) Have knowledge and interest in the problems of foster children;
24 and

25 (d) Be representative of all areas of this state and the demographics
26 of groups served by the Foster Child Ombudsman.

27 (4) The committee shall select one of its members as chairperson
28 and another as vice chairperson, for such terms and with duties and
29 powers necessary for the performance of the functions of such offices
30 as the committee determines.

31 (5) A majority of the members of the committee constitutes a quo-

1 **rum for the transaction of business. Decisions may be made by a ma-**
2 **jority of the quorum.**

3 **(6) The committee shall meet at least once each month at a place,**
4 **day and hour determined by the committee. The committee also shall**
5 **meet at other times and places specified by the call of the chairperson**
6 **or of a majority of the members of the committee. The committee**
7 **shall confer each month with the Foster Child Ombudsman.**

8 **(7) Members of the committee are not entitled to compensation or**
9 **reimbursement for expenses and serve as volunteers.**

10 **SECTION 8. The Foster Child Ombudsman Advisory Committee**
11 **shall:**

12 **(1) Monitor the Office of the Foster Child Ombudsman.**

13 **(2) Advise the Governor and the Legislative Assembly on the Office**
14 **of the Foster Child Ombudsman.**

15 **(3) Nominate, after interviews and according to prescribed criteria,**
16 **three persons to fill the Foster Child Ombudsman position or to fill a**
17 **vacancy in the position.**

18 **SECTION 9. ORS 418.201 is amended to read:**

19 418.201. It is the intent of the Legislative Assembly that each foster child
20 have certain essential rights, including but not limited to the following:

21 (1) To have the ability to make oral and written complaints about care,
22 placement or services that are unsatisfactory or inappropriate, and to be
23 provided with information about a formal process for making complaints
24 without fear of retaliation, harassment or punishment.

25 (2) To be notified of, and provided with transportation to, court hearings
26 and reviews by local citizen review boards pertaining to the foster child's
27 case when the matters to be considered or decided upon at the hearings and
28 reviews are appropriate for the foster child, taking into account the age and
29 developmental stage of the foster child.

30 (3) To be provided with written contact information of specific individuals
31 whom the foster child may contact regarding complaints, concerns or vio-

1 lations of rights, that is updated as necessary and kept current.

2 (4) When a foster child is 14 years of age or older, to be provided with
3 written information within 60 days of the date of any placement or any
4 change in placement, regarding:

5 (a) How to establish a bank account in the foster child's name as allowed
6 under state law;

7 (b) How to acquire a driver license as allowed under state law;

8 (c) How to remain in foster care after reaching 18 years of age;

9 (d) The availability of a tuition and fee waiver for a current or former
10 foster child under ORS 350.300;

11 (e) How to obtain a copy of the foster child's credit report, if any;

12 (f) How to obtain medical, dental, vision, mental health services or other
13 treatment, including services and treatments available without parental
14 consent under state law; and

15 (g) A transition toolkit, including a comprehensive transition plan.

16 (5) With respect to a foster child's rights under the federal and state
17 constitutions, laws, including case law, rules and regulations:

18 (a) To receive a document setting forth such rights that is age-appropriate
19 and developmentally appropriate within 60 days of the date of any placement
20 or any change in placement;

21 (b) To have a document setting forth such rights that is age-appropriate
22 and developmentally appropriate posted at the residences of all foster par-
23 ents, child-caring agencies and independent resident facilities;

24 (c) To have an annual review of such rights that is age-appropriate and
25 developmentally appropriate while the foster child is in substitute care; and

26 (d) When the foster child is 14 years of age or older:

27 (A) To receive a document setting forth such rights that is age-
28 appropriate and developmentally appropriate; and

29 (B) To acknowledge in writing receipt of the document and that the rights
30 contained in the document were explained in an age-appropriate manner.

31 (6) To be provided with current and updated contact information for

1 adults who are responsible for the care of the foster child and who are in-
2 volved in the foster child's case, including but not limited to caseworkers,
3 caseworker supervisors, attorneys, foster youth advocates and supporters,
4 court appointed special advocates, local citizen review boards and employees
5 of the Department of Human Services that provide certification of foster
6 parents, child-caring agencies and independent resident facilities.

7 (7) To *[have]* **be informed about the Office of the Foster Child Om-**
8 **budsman and have access to the services described in section 4 of this**
9 **2019 Act, including** a hotline phone number that is available to the foster
10 child at all times for the purposes of enabling the foster child to make
11 complaints and assert grievances regarding the foster child's care, safety or
12 well-being.

13 **SECTION 10.** ORS 418.992 is amended to read:

14 418.992. (1) In addition to any other liability or penalty provided by law,
15 the Director of Human Services may impose a civil penalty on a child-caring
16 agency that is subject to ORS 418.205 to 418.327, 418.470, 418.475 or 418.950
17 to 418.970 for any of the following:

18 (a) Violation of any of the terms or conditions of a license, certificate or
19 other authorization issued under ORS 418.205 to 418.327, 418.470, 418.475 or
20 418.950 to 418.970.

21 (b) Violation of any rule adopted by, or general order of, the Department
22 of Human Services that pertains to a child-caring agency.

23 (c) Violation of any final order of the director that pertains specifically
24 to the child-caring agency.

25 (d) Violation of the requirement to have a license, certificate or other
26 authorization under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to
27 418.970.

28 (2) The director shall impose a civil penalty not to exceed \$500, unless
29 otherwise required by law, on any child-caring agency for falsifying records,
30 reports, documents or financial statements or for causing another person to
31 do so.

1 (3) The director shall impose a civil penalty of not less than \$250 nor
2 more than \$500, unless otherwise required by law, on a child-caring facility
3 that assumes care or custody of, or provides care or services to, a child
4 knowing that the child's care needs exceed the license, certificate or au-
5 thorization classification of the child-caring agency if the assumption of care
6 or custody, or provision of care or services, places that child's health, safety
7 or welfare at risk.

8 (4) Unless the health, safety or welfare of a child is at risk, the director
9 in every case shall prescribe a reasonable time for elimination of a violation:

10 (a) Not to exceed 45 days after first notice of a violation; or

11 (b) In cases where the violation requires more than 45 days to correct,
12 such time as is specified in a plan of correction found acceptable by the di-
13 rector.

14 (5) A civil penalty imposed under this section may be remitted or reduced
15 upon such terms and conditions as the director considers proper and con-
16 sistent with the public health and safety.

17 (6) The department shall adopt rules establishing objective criteria for the
18 imposition and amount of civil penalties under ORS 418.992 to 418.998.

19 **(7) Civil penalties recovered from any child-caring agency shall be**
20 **deposited in the Office of the Foster Child Ombudsman subaccount of**
21 **the Office of Oregon Ombudsmen Account established in section 2 of**
22 **this 2019 Act.**

23

24

FOSTER PARENT OMBUDSMAN

25

26 **SECTION 11. (1) As used in this section:**

27 (a) **"Foster parent" means an individual who has a certificate to**
28 **operate a foster home issued under ORS 418.635 and who is providing**
29 **care to a foster child in the individual's home.**

30 (b) **"Service provider" means an individual, entity, agency or pro-**
31 **gram that provides information and services to foster parents, either**

1 **directly or indirectly, including but not limited to:**

2 **(A) Information and assistance in accessing parental and commu-**
3 **nity support, services and resources;**

4 **(B) Respite care;**

5 **(C) Training; and**

6 **(D) Coaching, mentoring or counseling.**

7 **(2) The Office of the Foster Parent Ombudsman is established. The**
8 **Governor shall appoint the Foster Parent Ombudsman in consultation**
9 **with the Foster Parent Ombudsman Advisory Committee established**
10 **under section 14 of this 2019 Act. The ombudsman shall be appointed**
11 **for a four-year term. The Governor shall fill a vacancy in the position**
12 **no later than 60 days after the vacancy occurs, in the same manner**
13 **as the appointment is made.**

14 **(3) The Foster Parent Ombudsman shall:**

15 **(a) Provide foster parents and individuals acting on their behalf**
16 **with information regarding the rights of foster parents set forth in**
17 **ORS 418.648;**

18 **(b) Investigate any complaint made by or on behalf of a foster**
19 **parent if the allegations contained in the complaint may adversely**
20 **affect the health, safety, welfare or rights of the foster parent;**

21 **(c) Assist foster parents in identifying and accessing resources in**
22 **the community and in connecting with local service providers;**

23 **(d) Encourage foster parents to participate in general studies, con-**
24 **ferences, inquiries or meetings related to foster care in this state;**

25 **(e) Organize or collaborate with others in organizing general**
26 **studies, conferences, inquiries or meetings to develop recommen-**
27 **dations for improving the foster care system in this state;**

28 **(f) Monitor the development and implementation of federal, state**
29 **and local laws and policies that impact the foster care system in this**
30 **state;**

31 **(g) Collect and compile data necessary to prepare the report sub-**

1 mitted to the Governor under ORS 182.500 and provide a copy of the
2 report to the Governor's Child Foster Care Advisory Commission es-
3 tablished in ORS 418.041; and

4 (h) Provide information to state and local agencies about problems
5 identified and reforms undertaken in the foster care system in this
6 state and work closely with associations and citizen groups and with
7 the state protection and advocacy system under ORS 192.517.

8 (4)(a) The Foster Parent Ombudsman shall:

9 (A) Maintain the hotline telephone number for foster parents re-
10 quired by ORS 418.648 (12); and

11 (B) In consultation with the Foster Parent Ombudsman Advisory
12 Committee, establish procedures for a foster parent to make a com-
13 plaint about the foster parent's interaction with individuals or agen-
14 cies involved in the foster care system.

15 (b)(A) The ombudsman and each designee appointed under section
16 12 of this 2019 Act shall have access to records of any public agency,
17 to the extent permitted by state and federal law, that are necessary
18 to carry out the duties of the ombudsman. The provisions of ORS
19 192.553 to 192.581 are not intended to limit the access of the ombuds-
20 man to the records of a foster parent or foster child, including medical
21 records of the foster child as authorized by the foster child or an in-
22 dividual legally authorized to act on behalf of the foster child, if
23 needed to investigate a complaint.

24 (B) The ombudsman and the Department of Human Services shall
25 enter into a confidentiality agreement permitting the ombudsman and
26 each designee to have access to electronic records of the department
27 that are necessary to carry out the duties of the ombudsman, if per-
28 mitted by state and federal law. The agreement must ensure that re-
29 cords obtained by the ombudsman from the department that are
30 confidential, privileged or otherwise protected from disclosure are not
31 further disclosed, except as permitted by state and federal law.

1 (c) The ombudsman or a designee shall report to a foster parent the
2 findings of the ombudsman or designee in the investigation of the
3 complaint and may make recommendations. If appropriate, the om-
4 budsman or designee shall attempt to resolve the complaint using in-
5 formal mediation or conflict resolution techniques.

6 (5) A foster parent who makes a complaint to the Foster Parent
7 Ombudsman in good faith under this section, or who participates in
8 an investigation of a complaint:

9 (a) May not be subjected to a penalty, sanction or restriction, or
10 be denied any right, privilege or benefit, on account of making the
11 complaint or participating in the investigation of the complaint; and

12 (b) Shall have immunity from any civil or criminal liability that
13 might otherwise be incurred or imposed on account of making the
14 complaint or participating in the investigation of the complaint.

15 (6) All state agencies shall cooperate with and assist the Foster
16 Parent Ombudsman in the performance of the ombudsman's duties
17 and functions.

18 SECTION 12. (1) The Foster Parent Ombudsman may appoint
19 designees to serve as representatives of the ombudsman in local com-
20 munities. The ombudsman shall regularly monitor the functions of
21 designees.

22 (2) The appointments of designees by the Foster Parent Ombudsman
23 shall be made in consultation with a local screening committee that
24 may consist of but need not be limited to persons representing:

25 (a) The Department of Human Services.

26 (b) Elected officials.

27 (c) The Oregon Health Authority.

28 (d) Foster care providers.

29 (e) Court appointed special advocates.

30 (f) Local citizen review boards.

31 (3) To be appointed as a designee, a person must complete an initial

1 **training and attend quarterly training sessions that are approved by**
2 **the Office of the Foster Parent Ombudsman.**

3 **(4) Designees must sign a contract with the Office of the Foster**
4 **Parent Ombudsman that outlines the scope of their duties.**

5 **(5) The qualifications of designees shall include experience working**
6 **with foster care providers and the ability to communicate well, to**
7 **understand laws, rules and regulations and to be assertive and objec-**
8 **tive.**

9 **(6) Applicants who have relevant experience in social work, mental**
10 **health, pediatrics or paralegal work shall be given preference in the**
11 **appointment of designees.**

12 **SECTION 13. The Foster Parent Ombudsman shall establish proce-**
13 **dures to maintain the confidentiality of the records and files of foster**
14 **parents. The procedures must meet the following requirements:**

15 **(1) The Foster Parent Ombudsman or designee may not disclose,**
16 **except to law enforcement and state agencies, the identity of any fos-**
17 **ter parent, or individual acting on behalf of a foster parent, without**
18 **written consent signed by the foster parent, the legal representative**
19 **of the foster parent or an individual legally authorized to act on behalf**
20 **of the foster parent. The written consent must specify to whom the**
21 **disclosure may be made.**

22 **(2) The identity of any foster parent or individual providing infor-**
23 **mation on behalf of the foster parent shall be confidential. If the**
24 **complaint becomes the subject of judicial proceedings, the investi-**
25 **gative information held by the Foster Parent Ombudsman or designee**
26 **shall be disclosed for the purpose of the proceedings if requested by**
27 **the court.**

28 **(3) The Foster Parent Ombudsman and the Foster Child Ombuds-**
29 **man may not exchange information concerning a foster parent or**
30 **foster child without the written consent described in subsection (1) of**
31 **this section.**

1 **SECTION 14.** (1) The Foster Parent Ombudsman Advisory Commit-
2 tee is established consisting of five members appointed by the Gover-
3 nor and confirmed by the Senate under ORS 171.562 and 171.565.

4 (2) The term of office for each member is four years. Before the
5 expiration of the term of a member, the Governor shall appoint a
6 successor whose term begins July 1 next following. A member is eli-
7 gible for reappointment. If there is a vacancy for any cause, the Gov-
8 ernor shall make an appointment to become immediately effective for
9 the unexpired term.

10 (3) The members of the committee must:

11 (a) Be residents of this state;

12 (b) Include individuals who are or who represent current or former
13 foster parents, including racial and ethnic minorities;

14 (c) Have knowledge and interest in the problems of foster parents;
15 and

16 (d) Be representative of all areas of this state and the demographics
17 of groups served by the Foster Parent Ombudsman.

18 (4) The committee shall select one of its members as chairperson
19 and another as vice chairperson, for such terms and with duties and
20 powers necessary for the performance of the functions of such offices
21 as the committee determines.

22 (5) A majority of the members of the committee constitutes a quo-
23 rum for the transaction of business. Decisions may be made by a ma-
24 jority of the quorum.

25 (6) The committee shall meet at least once each month at a place,
26 day and hour determined by the committee. The committee also shall
27 meet at other times and places specified by the call of the chairperson
28 or of a majority of the members of the committee. The committee
29 shall confer each month with the Foster Parent Ombudsman.

30 (7) Members of the committee are not entitled to compensation or
31 reimbursement for expenses and serve as volunteers.

1 **SECTION 15. The Foster Parent Ombudsman Advisory Committee**
2 **shall:**

3 **(1) Monitor the Office of the Foster Parent Ombudsman.**

4 **(2) Advise the Governor and the Legislative Assembly on the Office**
5 **of the Foster Parent Ombudsman.**

6 **(3) Nominate, after interviews and according to prescribed criteria,**
7 **three persons to fill the Foster Parent Ombudsman position or to fill**
8 **a vacancy in the position.**

9 **SECTION 16. ORS 418.648 is amended to read:**

10 418.648. A foster parent has the right to:

11 (1) Be treated with dignity, respect and trust as a member of a team, in-
12 cluding respect for the family values and routines of the foster parent.

13 (2) Be included as a valued member of a team that provides care and
14 planning for a foster child placed in the home of the foster parent.

15 (3) Receive support services, as resources permit, from the Department of
16 Human Services that are designed to assist in the care of the foster child
17 placed in the home of the foster parent.

18 (4) Be informed of any condition that relates solely to a foster child
19 placed in the home of the foster parent that may jeopardize the health or
20 safety of the foster parent or other members of the home or alter the manner
21 in which foster care should be provided to the foster child. The information
22 shall include complete access to written reports, psychological evaluations
23 and diagnoses that relate solely to a foster child placed in the home of the
24 foster parent provided that confidential information given to a foster parent
25 must be kept confidential by the foster parent, except as necessary to pro-
26 mote or to protect the health and welfare of the foster child and the com-
27 munity.

28 (5) Have input into a permanency plan for a foster child placed in the
29 home of the foster parent.

30 (6) Receive assistance from the department in dealing with family loss and
31 separation when the foster child leaves the home of the foster parent.

1 (7) Be informed of all policies and procedures of the department that re-
2 late to the role of the foster parent.

3 (8) Be informed of how to receive services and to have access to depart-
4 ment personnel or service providers 24 hours a day, seven days a week.

5 (9) Initiate an inactive referral status for a reasonable period of time, not
6 to exceed 12 months, to allow a foster parent relief from caring for foster
7 children.

8 (10) Not be discriminated against on the basis of race, color, religion, sex,
9 sexual orientation, national origin, age or disability.

10 (11) Be notified of the foster parent's right to limited participation in
11 proceedings in the juvenile court and provided with an explanation of that
12 right.

13 **(12) Have a hotline telephone number that is available to the foster**
14 **parent at all times for the purpose of enabling the foster parent to**
15 **make complaints and assert grievances regarding the foster parent's**
16 **duties.**

17 **(13) Be provided with written contact information, updated as nec-**
18 **essary and kept current, for specific individuals whom the foster par-**
19 **ent may contact regarding complaints, concerns or violations of**
20 **rights.**

21 **(14) Be informed about the Office of the Foster Parent Ombudsman**
22 **and have access to the services described in section 11 of this 2019 Act.**

23

24

MANDATORY REPORTING

25

26 **SECTION 17.** ORS 419B.005 is amended to read:

27 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-
28 quires otherwise:

29 (1)(a) "Abuse" means:

30 (A) Any assault, as defined in ORS chapter 163, of a child and any phys-
31 ical injury to a child which has been caused by other than accidental means,

1 including any injury which appears to be at variance with the explanation
2 given of the injury.

3 (B) Any mental injury to a child, which shall include only observable and
4 substantial impairment of the child's mental or psychological ability to
5 function caused by cruelty to the child, with due regard to the culture of the
6 child.

7 (C) Rape of a child, which includes but is not limited to rape, sodomy,
8 unlawful sexual penetration and incest, as those acts are described in ORS
9 chapter 163.

10 (D) Sexual abuse, as described in ORS chapter 163.

11 (E) Sexual exploitation, including but not limited to:

12 (i) Contributing to the sexual delinquency of a minor, as defined in ORS
13 chapter 163, and any other conduct which allows, employs, authorizes, per-
14 mits, induces or encourages a child to engage in the performing for people
15 to observe or the photographing, filming, tape recording or other exhibition
16 which, in whole or in part, depicts sexual conduct or contact, as defined in
17 ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving
18 a child or rape of a child, but not including any conduct which is part of
19 any investigation conducted pursuant to ORS 419B.020 or which is designed
20 to serve educational or other legitimate purposes; and

21 (ii) Allowing, permitting, encouraging or hiring a child to engage in
22 prostitution as described in ORS 167.007 or a commercial sex act as defined
23 in ORS 163.266, to purchase sex with a minor as described in ORS 163.413
24 or to engage in commercial sexual solicitation as described in ORS 167.008.

25 (F) Negligent treatment or maltreatment of a child, including but not
26 limited to the failure to provide adequate food, clothing, shelter or medical
27 care that is likely to endanger the health or welfare of the child.

28 (G) Threatened harm to a child, which means subjecting a child to a
29 substantial risk of harm to the child's health or welfare.

30 (H) Buying or selling a person under 18 years of age as described in ORS
31 163.537.

1 (I) Permitting a person under 18 years of age to enter or remain in or
2 upon premises where methamphetamines are being manufactured.

3 (J) Unlawful exposure to a controlled substance, as defined in ORS
4 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
5 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to
6 the child's health or safety.

7 (b) "Abuse" does not include reasonable discipline unless the discipline
8 results in one of the conditions described in paragraph (a) of this subsection.

9 (2) "Child" means an unmarried person who:

10 (a) Is under 18 years of age; or

11 (b) Is under 21 years of age and residing in or receiving care or services
12 at a child-caring agency as that term is defined in ORS 418.205.

13 (3) "Higher education institution" means:

14 (a) A community college as defined in ORS 341.005;

15 (b) A public university listed in ORS 352.002;

16 (c) The Oregon Health and Science University; and

17 (d) A private institution of higher education located in Oregon.

18 (4) "Law enforcement agency" means:

19 (a) A city or municipal police department.

20 (b) A county sheriff's office.

21 (c) The Oregon State Police.

22 (d) A police department established by a university under ORS 352.121 or
23 353.125.

24 (e) A county juvenile department.

25 (5) "Public or private official" means:

26 (a) Physician or physician assistant licensed under ORS chapter 677 or
27 naturopathic physician, including any intern or resident.

28 (b) Dentist.

29 (c) School employee, including an employee of a higher education insti-
30 tution.

31 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's

1 aide, home health aide or employee of an in-home health service.

2 (e) Employee of the Department of Human Services, Oregon Health Au-
3 thority, Early Learning Division, Youth Development Division, Office of
4 Child Care, the Oregon Youth Authority, a local health department, a com-
5 munity mental health program, a community developmental disabilities pro-
6 gram, a county juvenile department, a child-caring agency as that term is
7 defined in ORS 418.205 or an alcohol and drug treatment program.

8 (f) Peace officer.

9 (g) Psychologist.

10 (h) Member of the clergy.

11 (i) Regulated social worker.

12 (j) Optometrist.

13 (k) Chiropractor.

14 (L) Certified provider of foster care, or an employee thereof.

15 (m) Attorney.

16 (n) Licensed professional counselor.

17 (o) Licensed marriage and family therapist.

18 (p) Firefighter or emergency medical services provider.

19 (q) A court appointed special advocate, as defined in ORS 419A.004.

20 (r) A child care provider registered or certified under ORS 329A.030 and
21 329A.250 to 329A.450.

22 (s) Member of the Legislative Assembly.

23 (t) Physical, speech or occupational therapist.

24 (u) Audiologist.

25 (v) Speech-language pathologist.

26 (w) Employee of the Teacher Standards and Practices Commission directly
27 involved in investigations or discipline by the commission.

28 (x) Pharmacist.

29 (y) An operator of a preschool recorded program under ORS 329A.255.

30 (z) An operator of a school-age recorded program under ORS 329A.257.

31 (aa) Employee of a private agency or organization facilitating the pro-

1 vision of respite services, as defined in ORS 418.205, for parents pursuant to
2 a properly executed power of attorney under ORS 109.056.

3 (bb) Employee of a public or private organization providing child-related
4 services or activities:

5 (A) Including but not limited to youth groups or centers, scout groups or
6 camps, summer or day camps, survival camps or groups, centers or camps
7 that are operated under the guidance, supervision or auspices of religious,
8 public or private educational systems or community service organizations;
9 and

10 (B) Excluding community-based, nonprofit organizations whose primary
11 purpose is to provide confidential, direct services to victims of domestic vi-
12 olence, sexual assault, stalking or human trafficking.

13 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional
14 or professional athlete, if compensated and if the athlete is a child.

15 (dd) Personal support worker, as defined by rule adopted by the Home
16 Care Commission.

17 (ee) Home care worker, as defined in ORS 410.600.

18 **(ff) The Foster Child Ombudsman or a designee appointed under**
19 **section 5 of this 2019 Act.**

20 **(gg) The Foster Parent Ombudsman or a designee appointed under**
21 **section 12 of this 2019 Act.**

22 **SECTION 18.** ORS 419B.005, as amended by section 21, chapter 75,
23 Oregon Laws 2018, is amended to read:

24 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-
25 quires otherwise:

26 (1)(a) "Abuse" means:

27 (A) Any assault, as defined in ORS chapter 163, of a child and any phys-
28 ical injury to a child which has been caused by other than accidental means,
29 including any injury which appears to be at variance with the explanation
30 given of the injury.

31 (B) Any mental injury to a child, which shall include only observable and

1 substantial impairment of the child's mental or psychological ability to
2 function caused by cruelty to the child, with due regard to the culture of the
3 child.

4 (C) Rape of a child, which includes but is not limited to rape, sodomy,
5 unlawful sexual penetration and incest, as those acts are described in ORS
6 chapter 163.

7 (D) Sexual abuse, as described in ORS chapter 163.

8 (E) Sexual exploitation, including but not limited to:

9 (i) Contributing to the sexual delinquency of a minor, as defined in ORS
10 chapter 163, and any other conduct which allows, employs, authorizes, per-
11 mits, induces or encourages a child to engage in the performing for people
12 to observe or the photographing, filming, tape recording or other exhibition
13 which, in whole or in part, depicts sexual conduct or contact, as defined in
14 ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving
15 a child or rape of a child, but not including any conduct which is part of
16 any investigation conducted pursuant to ORS 419B.020 or which is designed
17 to serve educational or other legitimate purposes; and

18 (ii) Allowing, permitting, encouraging or hiring a child to engage in
19 prostitution as described in ORS 167.007 or a commercial sex act as defined
20 in ORS 163.266, to purchase sex with a minor as described in ORS 163.413
21 or to engage in commercial sexual solicitation as described in ORS 167.008.

22 (F) Negligent treatment or maltreatment of a child, including but not
23 limited to the failure to provide adequate food, clothing, shelter or medical
24 care that is likely to endanger the health or welfare of the child.

25 (G) Threatened harm to a child, which means subjecting a child to a
26 substantial risk of harm to the child's health or welfare.

27 (H) Buying or selling a person under 18 years of age as described in ORS
28 163.537.

29 (I) Permitting a person under 18 years of age to enter or remain in or
30 upon premises where methamphetamines are being manufactured.

31 (J) Unlawful exposure to a controlled substance, as defined in ORS

1 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
2 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to
3 the child's health or safety.

4 (b) "Abuse" does not include reasonable discipline unless the discipline
5 results in one of the conditions described in paragraph (a) of this subsection.

6 (2) "Child" means an unmarried person who:

7 (a) Is under 18 years of age; or

8 (b) Is under 21 years of age and residing in or receiving care or services
9 at a child-caring agency as that term is defined in ORS 418.205.

10 (3) "Higher education institution" means:

11 (a) A community college as defined in ORS 341.005;

12 (b) A public university listed in ORS 352.002;

13 (c) The Oregon Health and Science University; and

14 (d) A private institution of higher education located in Oregon.

15 (4) "Law enforcement agency" means:

16 (a) A city or municipal police department.

17 (b) A county sheriff's office.

18 (c) The Oregon State Police.

19 (d) A police department established by a university under ORS 352.121 or
20 353.125.

21 (e) A county juvenile department.

22 (5) "Public or private official" means:

23 (a) Physician or physician assistant licensed under ORS chapter 677 or
24 naturopathic physician, including any intern or resident.

25 (b) Dentist.

26 (c) School employee, including an employee of a higher education insti-
27 tution.

28 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's
29 aide, home health aide or employee of an in-home health service.

30 (e) Employee of the Department of Human Services, Oregon Health Au-
31 thority, Early Learning Division, Youth Development Division, Office of

1 Child Care, the Oregon Youth Authority, a local health department, a com-
2 munity mental health program, a community developmental disabilities pro-
3 gram, a county juvenile department, a child-caring agency as that term is
4 defined in ORS 418.205 or an alcohol and drug treatment program.

5 (f) Peace officer.

6 (g) Psychologist.

7 (h) Member of the clergy.

8 (i) Regulated social worker.

9 (j) Optometrist.

10 (k) Chiropractor.

11 (L) Certified provider of foster care, or an employee thereof.

12 (m) Attorney.

13 (n) Licensed professional counselor.

14 (o) Licensed marriage and family therapist.

15 (p) Firefighter or emergency medical services provider.

16 (q) A court appointed special advocate, as defined in ORS 419A.004.

17 (r) A child care provider registered or certified under ORS 329A.030 and
18 329A.250 to 329A.450.

19 (s) Member of the Legislative Assembly.

20 (t) Physical, speech or occupational therapist.

21 (u) Audiologist.

22 (v) Speech-language pathologist.

23 (w) Employee of the Teacher Standards and Practices Commission directly
24 involved in investigations or discipline by the commission.

25 (x) Pharmacist.

26 (y) An operator of a preschool recorded program under ORS 329A.255.

27 (z) An operator of a school-age recorded program under ORS 329A.257.

28 (aa) Employee of a private agency or organization facilitating the pro-
29 vision of respite services, as defined in ORS 418.205, for parents pursuant to
30 a properly executed power of attorney under ORS 109.056.

31 (bb) Employee of a public or private organization providing child-related

1 services or activities:

2 (A) Including but not limited to youth groups or centers, scout groups or
3 camps, summer or day camps, survival camps or groups, centers or camps
4 that are operated under the guidance, supervision or auspices of religious,
5 public or private educational systems or community service organizations;
6 and

7 (B) Excluding community-based, nonprofit organizations whose primary
8 purpose is to provide confidential, direct services to victims of domestic vi-
9 olence, sexual assault, stalking or human trafficking.

10 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional
11 or professional athlete, if compensated and if the athlete is a child.

12 (dd) Personal support worker, as defined in ORS 410.600.

13 (ee) Home care worker, as defined in ORS 410.600.

14 **(ff) The Foster Child Ombudsman or a designee appointed under**
15 **section 5 of this 2019 Act.**

16 **(gg) The Foster Parent Ombudsman or a designee appointed under**
17 **section 12 of this 2019 Act.**

18

19 **OFFICE OF THE LONG TERM CARE OMBUDSMAN**

20

21 **SECTION 19.** ORS 441.403 is amended to read:

22 441.403. (1) The Office of the Long Term Care Ombudsman is established.
23 The Long Term Care Ombudsman shall function separately and independ-
24 ently from any other state agency. The Governor shall appoint the Long
25 Term Care Ombudsman for a four-year term from a list of three nominees
26 nominated by the [*Residential Ombudsman and Public Guardianship Advi-*
27 *sory Board*] **Long Term Care Ombudsman Advisory Committee** estab-
28 lished under ORS 441.416. The appointment of the Long Term Care
29 Ombudsman is subject to Senate confirmation under ORS 171.562 and 171.565.
30 A vacancy **in the position** shall be filled [*within*] **no later than** 60 days
31 **after the vacancy occurs**, in the same manner as an appointment is made.

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

5 (3) The Long Term Care Ombudsman shall have background and experi-
6 ence in the following areas:

7 (a) The fields of aging, mental health or developmental disabilities;

8 (b) Physical or behavioral health care;

9 (c) Working with community programs;

10 (d) Strong understanding of long term care issues, both regulatory and
11 policy;

12 (e) Working with health care providers;

13 (f) Working with and involvement in volunteer programs; and

14 (g) Administrative and managerial experience.

15 **SECTION 20.** ORS 441.406, as amended by section 17, chapter 61, Oregon
16 Laws 2018, is amended to read:

17 441.406. (1) The **Office of the** Long Term Care Ombudsman shall carry
18 out the following duties:

19 (a) Investigate and resolve complaints made by or for residents of long
20 term care facilities about administrative actions that may adversely affect
21 their health, safety, welfare or rights, including subpoenaing any person to
22 appear, to give sworn testimony or to produce documentary or other evidence
23 that is reasonably material to any matter under investigation.

24 (b) Undertake, participate in or cooperate with persons and agencies in
25 such conferences, inquiries, meetings or studies as may lead to improvements
26 in the functioning of long term care facilities.

27 (c) Monitor the development and implementation of federal, state and lo-
28 cal laws, regulations and policies that relate to long term care facilities in
29 this state.

30 (d) Provide information to public agencies about the problems of residents
31 of long term care facilities.

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

3 (f) Widely publicize the Long Term Care Ombudsman's services, purpose
4 and mode of operation.

5 (g) Collaborate with the Oregon Health Authority, the Department of
6 Human Services, the Long Term Care Administrators Board and any other
7 appropriate agencies and organizations to establish a statewide system to
8 collect and analyze information on complaints and conditions in long term
9 care facilities for the purpose of publicizing improvements and resolving
10 significant problems.

11 (h) Contract with the state protection and advocacy system described in
12 ORS 192.517 (1) to provide services and assistance to persons who are pro-
13 spective or current residents of a mental health treatment facility [*or of a*
14 *residential facility for individuals with developmental disabilities*] when the
15 system has received a notice regarding the person pursuant to ORS 125.060
16 (7)(c) or (8)(c).

17 (i) Appoint designees to serve as local representatives of the Office of the
18 Long Term Care Ombudsman in various districts of the state and regularly
19 monitor their functions.

20 (j) Specify qualifications and duties of designees.

21 (k) Adopt rules necessary for carrying out ORS 441.402 to [~~441.414~~]
22 **441.419**, after consultation with the [*Residential Ombudsman and Public*
23 *Guardianship Advisory Board*] **Long Term Care Ombudsman Advisory**
24 **Committee.**

25 **(L) Collect and compile data necessary to prepare the report sub-**
26 **mitted to the Governor under ORS 182.500.**

27 [(L)] **(m)** Provide periodically, or at least annually, a report to the [*Gov-*
28 *ernor, authority,*] department and **the** Legislative Assembly.

29 [(m) *Prepare necessary reports with the assistance of the authority and the*
30 *department.*]

31 [(n) *Advise and support the Oregon Public Guardian and Conservator ap-*

1 *pointed under ORS 125.678.]*

2 *[(o) Supervise, monitor, advise and support the Residential Facilities Om-*
3 *budsman appointed under ORS 443.382.]*

4 (2) At least quarterly, the Department of Human Services shall provide
5 the Long Term Care Ombudsman with a list of the number of licensed or
6 certified beds in each long term care facility for which the ombudsman has
7 responsibilities under this section.

8 **SECTION 21.** ORS 441.408 is amended to read:

9 441.408. (1) The Long Term Care Ombudsman and each designee shall have
10 the right of entry into long term care facilities at any time considered nec-
11 essary and reasonable by the ombudsman or the designee for the purpose of:

12 (a) Investigating and resolving complaints made by residents or made on
13 their behalf;

14 (b) Interviewing residents, with their consent, in private;

15 (c) Offering the services of the ombudsman or the designee to any resi-
16 dent, in private;

17 (d) Interviewing employees or agents of the facility;

18 (e) Consulting regularly with the facility administration; and

19 (f) Providing services authorized by law or by rule.

20 (2)(a) The ombudsman shall have access to any resident's records, and to
21 records of any public agency necessary to the duties of the ombudsman, in-
22 cluding records on reports of resident abuse made pursuant to ORS [124.050
23 to 124.095 and] 441.630 to 441.680. The provisions of ORS 192.553 to 192.581
24 are not intended to limit the access of the ombudsman to medical records
25 of residents of long term care facilities. If necessary to investigate a com-
26 plaint, designees shall have access to individual resident's records, including
27 medical records as authorized by the resident or the resident's legal repre-
28 sentative.

29 (b) If a resident's legal representative denies access to the resident's re-
30 cords by the ombudsman or a designee, the ombudsman shall have access to
31 the records if the ombudsman has reasonable cause to believe that the legal

1 representative is not acting in the best interests of the resident.

2 (3) The ombudsman shall enter into confidentiality agreements with the
3 Department of Human Services and with the Oregon Health Authority per-
4 mitting the ombudsman to have access to electronic records of the depart-
5 ment and the authority that are necessary to carry out the duties of the
6 ombudsman. The agreement must ensure that records obtained by the om-
7 budsman from the department or the authority that are confidential, privi-
8 leged or otherwise protected from disclosure are not further disclosed, except
9 as permitted by state and federal law.

10 (4) Entry and investigation authorized by this section shall be done in a
11 manner that does not disrupt significantly the providing of nursing, resi-
12 dential or other personal care or treatment to residents.

13 (5) The ombudsman or the designee must show identification to the person
14 in charge of the facility. The resident shall have the right to refuse to com-
15 municate with the ombudsman or the designee. The refusal shall be made
16 directly to the ombudsman or the designee and not through an intermediary.

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

20 **SECTION 22.** ORS 441.411 is amended to read:

21 441.411. (1) The Long Term Care Ombudsman shall prepare and distribute
22 to each long term care facility in this state a written notice describing the
23 procedures to follow in making a complaint, including the address and tele-
24 phone number of the ombudsman and local designee, if any, and a poster
25 describing the Long Term Care Ombudsman Program and providing contact
26 information.

27 (2) The administrator of each long term care facility shall post the writ-
28 ten notice and poster required by this section in conspicuous places in the
29 facility in accordance with procedures provided by the **Long Term Care**
30 Ombudsman and shall give the written notice to each resident and legally
31 appointed guardian, if any.

1 **SECTION 23.** ORS 441.413 is amended to read:

2 441.413. (1) The Long Term Care Ombudsman shall appoint designees in
3 consultation with local screening committees that may consist of but not be
4 limited to persons representing:

- 5 (a) The area agency, as defined in ORS 410.040.
- 6 (b) The local office of the Department of Human Services.
- 7 (c) The local health department.
- 8 (d) Senior citizens groups in the area.
- 9 (e) Local elected officials.

10 (2) To be appointed as a designee, a person must complete an initial
11 training, as prescribed by the Long Term Care Ombudsman by rule, and at-
12 tend quarterly training sessions that are approved by the ombudsman and
13 that shall be coordinated and funded by the Department of Human Services
14 [*and the Oregon Health Authority*], subject to the availability of funds. Local
15 screening committees shall be appointed by and serve at the pleasure of the
16 ombudsman.

17 (3) Designees must sign a contract with the [*state*] **Office of the Long**
18 **Term Care Ombudsman** that outlines the scope of their duties. In districts
19 where a designee is an employee or agent of a local entity, a three-party
20 contract shall be executed. Violation of the contract is cause for the termi-
21 nation of the appointment. A directory of all designees shall be maintained
22 in the Office of the Long Term Care Ombudsman.

23 (4) The qualifications of designees shall include experience with long term
24 care facilities or residents or potential residents of long term care facilities,
25 and the ability to communicate well, to understand laws, rules and regu-
26 lations, and to be assertive, yet objective.

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

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

1 (a) Promote rapport and trust between the residents and staff of the long
2 term care facilities and Long Term Care Ombudsman;

3 (b) Assist residents with participating more actively in determining the
4 delivery of services at the facilities;

5 (c) Serve as an educational resource;

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

8 (e) Ensure equitable resolution of problems.

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

10 (a) Visit each assigned long term care facility on a regular basis:

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

12 (B) Review, with a specified staff member, any problems or concerns that
13 need to be considered.

14 (C) Visit individual residents and resident councils.

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

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

18 (d) Keep residents and staff informed of the Long Term Care Ombudsman
19 Program.

20 (e) Periodically review the rights prescribed in ORS 441.605, 441.610 and
21 441.612, and any other applicable rights to services, with residents, families,
22 guardians, administrators and staff of long term care facilities.

23 (f) Perform other related duties as specified.

24 **SECTION 24.** ORS 441.416 is amended to read:

25 441.416. (1) There is established a [*Residential Ombudsman and Public*
26 *Guardianship Advisory Board of 11 members to be appointed in the following*
27 *manner:*]

28 [(a) *One person appointed by the Speaker of the House of*
29 *Representatives;*]

30 [(b) *One person appointed by the President of the Senate;*]

31 [(c) *One person appointed by the House Minority Leader;*]

1 [(d) One person appointed by the Senate Minority Leader;]

2 [(e) One person appointed by the Governor from each list of four names
3 submitted by organizations for seniors, organizations for persons with mental
4 illness and the Oregon Council on Developmental Disabilities; and]

5 [(f) Four persons appointed by the Governor, two of whom must have ex-
6 pertise in the provision of guardianship, conservatorship and other fiduciary
7 services for persons with inadequate resources.] **Long Term Care Ombuds-**

8 **man Advisory Committee consisting of five members appointed by the**
9 **Governor, two of whom must be selected by the Governor from a list**
10 **of four names submitted by organizations for seniors.**

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

13 (3) The term of office of each member is four years. Before the expiration
14 of the term of a member, the [appointing authority] **Governor** shall appoint
15 a successor whose term begins on July 1 next following. A member is eligible
16 for reappointment. If there is a vacancy for any cause, the [appointing au-
17 thority] **Governor** shall make an appointment to become immediately effec-
18 tive for the unexpired term.

19 (4) The members of the [board] **committee** must be residents of this state
20 who are broadly representative, to the extent possible, of persons [residing
21 in residential facilities as defined in ORS 443.380 or long term care
22 facilities] **over 60 years of age**, including members of racial and ethnic mi-
23 norities, who have knowledge and interest in the problems of [persons resid-
24 ing in residential facilities] **seniors**, and who are representative of all areas
25 of this state [and the demographics of groups served by the Long Term Care
26 Ombudsman].

27 (5) A member of the [board] **committee** may not have a financial or
28 fiduciary interest in [residential facilities as defined in ORS 443.380,] long
29 term care facilities or service providers, or involvement in the licensing or
30 certification of [residential facilities,] long term care facilities or service
31 providers.

1 (6) The *[board]* **committee** shall select one of its members as chairperson
2 and another as vice chairperson, for such terms and with duties and powers
3 necessary for the performance of the functions of such offices as the
4 *[board]* **committee** determines.

5 (7) A majority of the members of the *[board]* **committee** constitutes a
6 quorum for the transaction of business. Decisions may be made by a majority
7 of the quorum.

8 (8) The *[board]* **committee** shall meet at least once each month at a
9 place, day and hour determined by the *[board]* **committee**. The *[board]*
10 **committee** also shall meet at other times and places specified by the call
11 of the chairperson or of a majority of the members of the *[board]*
12 **committee**. The *[board]* **committee** shall confer each month with the Long
13 Term Care Ombudsman. All meetings are subject to ORS 192.610 to 192.690.

14 (9) A member of the *[board]* **committee** is **not** entitled to compensation
15 *[and expenses as provided in ORS 292.495]* **or reimbursement for expenses**
16 **and services as a volunteer on the committee.**

17 **SECTION 25.** ORS 441.417 is amended to read:

18 441.417. The *[Residential Ombudsman and Public Guardianship Advisory*
19 *Board]* **Long Term Care Ombudsman Advisory Committee** shall:

20 (1) Monitor the **Office of the** Long Term Care Ombudsman *[Program]*.

21 (2) Advise the Governor and the Legislative Assembly on the **Office of**
22 **the** Long Term Care Ombudsman *[Program]*.

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

26 **SECTION 26.** ORS 441.418 is amended to read:

27 441.418. (1) A *[residential facility as defined in ORS 443.380 or a]* long
28 term care facility that files a complaint against a designee appointed under
29 ORS 441.413 and objects to the action of the Long Term Care Ombudsman
30 in resolving the complaint may appeal the ombudsman's action to a panel
31 of the *[Residential Ombudsman and Public Guardianship Advisory Board]*

1 **Long Term Care Ombudsman Advisory Committee.**

2 (2) The *[board]* **committee** on its own motion may review any action by
 3 the **Long Term Care** Ombudsman appealable under this section. The review
 4 shall provide an opportunity for written and oral presentation by the *[resi-*
 5 *dential facility as defined in ORS 443.380 or a]* long term care facility and
 6 the ombudsman. The *[board]* **committee** shall issue its findings and any in-
 7 structions to the ombudsman in written form consistent with the federal
 8 Older Americans Act or other applicable federal law.

9 (3) If the *[board]* **committee** disagrees with the action of the **Long Term**
 10 **Care** Ombudsman, the *[board]* **committee** may refer the resolution back to
 11 the ombudsman with instructions consistent with the federal Older Ameri-
 12 cans Act or other applicable federal law to conform the ombudsman's action
 13 in the matter to the recommendations of the *[board]* **committee**.

14 **SECTION 27.** ORS 410.550 is amended to read:

15 410.550. (1) The Medicaid Long Term Care Quality and Reimbursement
 16 Advisory Council is created, to consist of *[12]* **13** members. Appointed mem-
 17 bers shall be residents of *[the State of Oregon]* **this state** and representative
 18 of the geographic locations of all long term care facilities and *[community-*
 19 *based care]* **residential** facilities in this state. The members shall include:

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

22 **(b) The Residential Facilities Ombudsman, who shall serve as a**
 23 **standing member of the committee;**

24 *[(b)]* **(c)** A representative of the Governor's Commission on Senior Ser-
 25 vices, to be appointed by the commission;

26 *[(c)]* **(d)** A representative of the Oregon Disabilities Commission, to be
 27 appointed by the commission;

28 *[(d)]* **(e)** A representative of the Oregon Association of Area Agencies on
 29 Aging and Disabilities, to be appointed by the Governor;

30 *[(e)]* **(f)** A representative of a senior or disabilities advocacy organization
 31 or an individual who advocates on behalf of seniors or persons with disabil-

1 ities, to be appointed by the Governor;

2 [(f)] (g) A nursing home administrator licensed under ORS 678.710 to
3 678.820 who has practiced continuously in Oregon in long term care for three
4 years immediately preceding appointment, to be appointed by the Speaker of
5 the House of Representatives;

6 [(g)] (h) [*Two consumers of residential or long term care facilities*] **A res-**
7 **ident of a long term care facility**, as defined in ORS 441.402 [*and 442.015,*
8 *or community-based care facilities or family members of such residents*], **or a**
9 **family member of a resident**, to be appointed by the Speaker of the House
10 of Representatives;

11 (i) **A resident of a residential facility, as defined in ORS 443.380, or**
12 **a family member of a resident, to be appointed by the Speaker of the**
13 **House of Representatives;**

14 [(h)] (j) A director of nurses of an Oregon long term care facility who has
15 practiced in this state in long term care for three years preceding appoint-
16 ment, to be appointed by the Speaker of the House of Representatives;

17 [(i)] (k) A representative of an assisted living facility or a residential care
18 facility, to be appointed by the President of the Senate;

19 [(j)] (L) A representative of an adult foster home, to be appointed by the
20 President of the Senate; and

21 [(k)] (m) An in-home care agency provider, to be appointed by the Presi-
22 dent of the Senate.

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

25 (3) Members of the council shall receive no compensation for their ser-
26 vices but unpaid volunteers not otherwise compensated shall be allowed ac-
27 tual and necessary travel expenses incurred in the performance of their
28 duties.

29 (4) The council shall:

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

1 elected;

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

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

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

11 **SECTION 28. All moneys in the Long Term Care Ombudsman Ac-**
12 **count established in ORS 441.419 are transferred to the Office of**
13 **Oregon Ombudsmen Account established in section 2 of this 2019 Act.**
14 **The Office of Oregon Ombudsmen shall allocate the moneys to the**
15 **subaccounts of the Office of the Long Term Care Ombudsman and the**
16 **Office of the Residential Facilities Ombudsman as necessary for the**
17 **Office of the Long Term Care Ombudsman and the Office of the Resi-**
18 **dential Facilities Ombudsman to carry out their respective duties.**

19

20 **RESIDENTIAL FACILITIES OMBUDSMAN**

21

22 **SECTION 29.** ORS 443.382 is amended to read:

23 443.382. [(1) *The Long Term Care Ombudsman, in consultation with the*
24 *Residential Ombudsman and Public Guardianship Advisory Board established*
25 *under ORS 441.416, shall appoint a Residential Facilities Ombudsman for a*
26 *four-year term. The Residential Facilities Ombudsman serves at the pleasure*
27 *of the Long Term Care Ombudsman and may be removed by the Long Term*
28 *Care Ombudsman for cause. The Long Term Care Ombudsman shall fill any*
29 *vacancy within 60 days. The salary of the Residential Facilities Ombudsman*
30 *shall be determined by the Long Term Care Ombudsman. The Residential*
31 *Facilities Ombudsman shall be reimbursed for all reasonable travel and other*

1 *expenses incurred in the performance of the ombudsman's official duties.]*

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

6 **(1) The Office of the Residential Facilities Ombudsman is estab-**
7 **lished in the Office of Oregon Ombudsmen. The Governor shall appoint**
8 **the Residential Facilities Ombudsman for a four-year term from a list**
9 **of three nominees nominated by the Residential Facilities Ombudsman**
10 **Advisory Committee established under section 30 of this 2019 Act. A**
11 **vacancy in the position shall be filled no later than 60 days after the**
12 **vacancy occurs, in the same manner as an appointment is made.**

13 **(2) The Residential Facilities Ombudsman may be removed for just**
14 **cause, upon recommendation to the Governor by the Residential Fa-**
15 **cilities Ombudsman Advisory Committee.**

16 **(3) The Residential Facilities Ombudsman shall have background**
17 **and experience in the following areas:**

18 **(a) The fields of mental health or intellectual or developmental**
19 **disabilities and behavioral health care;**

20 **(b) Working with community programs;**

21 **(c) Residential facility regulatory and policy issues;**

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

23 **(e) Administration and management.**

24 **[(3)] (4) The Residential Facilities Ombudsman or a designee appointed**
25 **under ORS 443.386 shall:**

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

28 **(b) Provide residents, families of residents, guardians, community mem-**
29 **bers and administrators and staff of residential facilities with information**
30 **regarding the rights of residents as set forth in ORS 427.107 and 430.210 and**
31 **any other applicable rights of residents.**

1 (c) Widely publicize the [*Residential Facilities*] ombudsman's services,
2 purpose and mode of operation.

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

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

8 (f) Provide services to residents to assist them in protecting their health,
9 safety, welfare and rights.

10 (g) Ensure that residents have regular, timely, private and unimpeded
11 access to the [*Residential Facilities*] ombudsman's services and that a resi-
12 dent or an individual acting on behalf of a resident who files a complaint
13 receives a timely response to the complaint from the ombudsman or a
14 designee.

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

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

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

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

25 (L) Train designees.

26 (m) Promote the development of organizations to advocate on behalf of
27 residents of residential facilities.

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

30 (o) Assist residents and individuals acting on their behalf in locating and
31 accessing resources in the community and in connecting with local service

1 providers.

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

4 (q) Make recommendations for improvements in the functioning of the
5 residential facility system in this state.

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

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

12 (t) Collect and compile data necessary to prepare the report submitted to
13 the Governor under ORS 182.500.

14 **(u) Work with residents to identify and recommend processes for**
15 **making complaints about service providers and entities.**

16 [(u)] (v) Adopt rules necessary for carrying out ORS 443.380 to 443.394,
17 in accordance with ORS chapter 183, in consultation with the [*Long Term*
18 *Care Ombudsman and the Residential Ombudsman and Public Guardianship*
19 *Advisory Board*] **Residential Facilities Ombudsman Advisory**
20 **Committee.**

21 **(5) The Residential Facilities Ombudsman shall contract with the**
22 **state protection and advocacy system described in ORS 192.517 (1) to**
23 **provide services and assistance to persons who are prospective or**
24 **current residents of a residential facility for individuals with develop-**
25 **mental disabilities when the system has received a notice regarding**
26 **the person pursuant to ORS 125.060 (7)(c) or (8)(c).**

27 **(6) The authority and the department shall provide the Residential**
28 **Facilities Ombudsman and the designees monthly, in a format speci-**
29 **fied by the ombudsman, demographic information about each resident**
30 **in the residential facilities for which the ombudsman or designee has**
31 **responsibilities under this section.**

1 (7) All state agencies and service providers shall cooperate with and
2 assist the Residential Facilities Ombudsman and designees in the per-
3 formance of the ombudsman's duties and functions.

4 **SECTION 30.** (1) The Residential Facilities Ombudsman Advisory
5 Committee is established consisting of five members appointed by the
6 Governor, one of whom must be selected by the Governor from a list
7 of four names submitted by an organization for persons with mental
8 illness and one of whom must be selected by the Governor from a list
9 of four names submitted by the Oregon Council on Developmental
10 Disabilities. Members are subject to confirmation by the Senate under
11 ORS 171.562 and 171.565.

12 (2) The term of office for each member is four years. Before the
13 expiration of the term of a member, the Governor shall appoint a
14 successor whose term begins July 1 next following. A member is eli-
15 gible for reappointment. If there is a vacancy for any cause, the Gov-
16 ernor shall make an appointment to become immediately effective for
17 the unexpired term.

18 (3) The members of the committee must be residents of this state
19 who are broadly representative of persons residing in residential fa-
20 cilities, including members of racial and ethnic minorities, who have
21 knowledge and interest in the problems of individuals residing in res-
22 idential facilities and who are representative of all areas of this state
23 and the demographics of groups served by the Residential Facilities
24 Ombudsman.

25 (4) A member of the committee may not have a financial or
26 fiduciary interest in residential facilities or service providers, or in-
27 volvement in the licensing or certification of residential facilities or
28 service providers.

29 (5) The committee shall select one of its members as chairperson
30 and another as vice chairperson, for such terms and with duties and
31 powers necessary for the performance of the functions of such offices

1 as the committee determines.

2 (6) A majority of the members of the committee constitutes a quo-
3 rum for the transaction of business. Decisions may be made by a ma-
4 jority of the quorum.

5 (7) The committee shall meet at least once each month at a place,
6 day and hour determined by the committee. The committee also shall
7 meet at other times and places specified by the call of the chairperson
8 or of a majority of the members of the committee. The committee
9 shall confer each month with the Residential Facilities Ombudsman.

10 (8) Members of the committee are not entitled to compensation or
11 reimbursement for expenses and serve as volunteers on the committee.

12 SECTION 31. The Residential Facilities Ombudsman Advisory
13 Committee shall:

14 (1) Monitor the Office of the Residential Facilities Ombudsman.

15 (2) Advise the Governor and the Legislative Assembly on the Office
16 of the Residential Facilities Ombudsman.

17 (3) Nominate, after interviews and according to prescribed criteria,
18 three persons to fill the Residential Facilities Ombudsman position or
19 to fill a vacancy in the position.

20 SECTION 32. The Residential Facilities Ombudsman shall establish
21 procedures to maintain the confidentiality of the records and files of
22 residents of residential facilities. These procedures must meet the fol-
23 lowing requirements:

24 (1) The ombudsman or a designee may not disclose the identity of
25 any resident unless the complainant or the resident, or the legal rep-
26 resentative of either, consents in writing to the disclosure and speci-
27 fies to whom the disclosure may be made.

28 (2) The identity of any complainant or resident on whose behalf a
29 complaint is made, or individual providing information on behalf of
30 the complainant or the resident, shall be confidential. If the com-
31 plaint becomes the subject of judicial proceedings, the investigative

1 information held by the ombudsman or the designee shall be disclosed
2 for the purpose of the proceedings if requested by the court.

3 **SECTION 33. (1) The Residential Facilities Ombudsman and each**
4 **designee shall have the right of entry into residential facilities at any**
5 **time considered necessary and reasonable by the ombudsman or the**
6 **designee for the purpose of:**

7 (a) Investigating and resolving complaints made by residents or
8 made on their behalf;

9 (b) Interviewing residents, with their consent, in private;

10 (c) Offering the services of the ombudsman or the designee to any
11 resident, in private;

12 (d) Interviewing employees or agents of the facility;

13 (e) Consulting regularly with the facility administration; and

14 (f) Providing services authorized by law or by rule.

15 (2)(a) The ombudsman shall have access to any resident's records,
16 and to records of any public agency necessary to the duties of the
17 ombudsman, including records on reports of resident abuse made
18 pursuant to ORS 124.050 to 124.095 and 441.630 to 441.680. The provisions
19 of ORS 192.553 to 192.581 are not intended to limit the access of the
20 ombudsman to medical records of residents of residential facilities. If
21 necessary to investigate a complaint, designees shall have access to
22 individual resident's records, including medical records as authorized
23 by the resident or the resident's legal representative.

24 (b) If a resident's legal representative denies access to the resident's
25 records by the ombudsman or a designee, the ombudsman shall have
26 access to the records if the ombudsman has reasonable cause to be-
27 lieve that the legal representative is not acting in the best interests
28 of the resident.

29 (3) The ombudsman shall enter into confidentiality agreements with
30 the Department of Human Services and with the Oregon Health Au-
31 thority permitting the ombudsman to have access to electronic records

1 of the department and the authority that are necessary to carry out
2 the duties of the ombudsman. The agreement must ensure that re-
3 cords obtained by the ombudsman from the department or the au-
4 thority that are confidential, privileged or otherwise protected from
5 disclosure are not further disclosed, except as permitted by state and
6 federal law.

7 (4) Entry and investigation authorized by this section shall be done
8 in a manner that does not disrupt significantly the providing of nurs-
9 ing, residential or other personal care or treatment to residents.

10 (5) The ombudsman or the designee must show identification to the
11 person in charge of the facility. The resident shall have the right to
12 refuse to communicate with the ombudsman or the designee. The
13 refusal shall be made directly to the ombudsman or the designee and
14 not through an intermediary.

15 (6) The resident shall have the right to participate in planning any
16 course of action to be taken on behalf of the resident by the ombuds-
17 man or the designee.

18 **SECTION 34.** (1) Following an investigation, the Residential Facili-
19 ties Ombudsman or the designee shall report opinions or recommen-
20 dations to the party or parties affected and, if appropriate, shall
21 attempt to resolve the complaint using informal techniques of medi-
22 ation, conciliation and persuasion. Complaints of conditions adversely
23 affecting residents of residential facilities, or complaints of conditions
24 threatening the safety or well-being of residents that cannot be re-
25 solved in the manner described in this section, shall be referred to an
26 appropriate state agency.

27 (2) Programs that promote the safety or emotional or physical
28 well-being of residents of residential facilities shall be promoted and
29 publicized by the ombudsman and the designees.

30 **SECTION 35.** (1) Any employee or agent of a residential facility
31 acting in good faith in discussing resident care pursuant to section 33

1 of this 2019 Act shall have immunity from any civil liability that might
2 otherwise be incurred or imposed with respect to the making of such
3 report.

4 (2) Any employee or agent who makes a report pursuant to section
5 33 of this 2019 Act may not be subjected to any retaliation by any of-
6 ficial or other employee of a residential facility solely for making a
7 report, including but not limited to restriction of otherwise lawful ac-
8 cess to the facility or to any resident of the facility, or, if an employee,
9 to dismissal or harassment.

10 (3) The Residential Facilities Ombudsman or the designee acting in
11 good faith in discussing resident care pursuant to section 33 of this
12 2019 Act shall have immunity from any civil liability that might oth-
13 erwise be incurred or imposed with respect to the discussion.

14 SECTION 36. (1) A residential facility as defined in ORS 443.380 that
15 files a complaint against a designee appointed under ORS 443.386 and
16 objects to the action of the Residential Facilities Ombudsman in re-
17 solving the complaint may appeal the ombudsman's action to a panel
18 of the Residential Facilities Ombudsman Advisory Committee.

19 (2) The committee on its own motion may review any action by the
20 ombudsman appealable under this section. The review shall provide
21 an opportunity for written and oral presentation by the residential
22 facility as defined in ORS 443.380 and the ombudsman. The committee
23 shall issue its findings and any instructions to the ombudsman in
24 written form consistent with the federal Older Americans Act or other
25 applicable federal law.

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

31 SECTION 37. ORS 443.386 is amended to read:

1 443.386. (1) The Residential Facilities Ombudsman [*shall*] **may**, in con-
2 sultation with the [*Long Term Care*] **Residential Facilities Ombudsman**
3 **Advisory Committee**, appoint designees to serve as representatives of the
4 ombudsman in local communities. The ombudsman shall regularly monitor
5 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 38.** ORS 443.396 is amended to read:

16 443.396. The Residential Facilities Ombudsman appointed under ORS
17 443.382 may solicit and accept gifts, grants and donations from public and
18 private sources for the purpose of carrying out ORS 443.380 to 443.394, and
19 the moneys shall be deposited in the [*Long Term Care Ombudsman Account*
20 *established under ORS 441.419*] **Office of Oregon Ombudsmen Account**
21 **established in section 2 of this 2019 Act.**

22 **SECTION 39.** ORS 443.455 is amended to read:

23 443.455. (1) Except as provided in subsection (5) of this section, for pur-
24 poses of imposing civil penalties, residential facilities approved under ORS
25 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

26 (2)(a) The Director of Human Services shall impose penalties on residen-
27 tial care facilities pursuant to ORS 441.731.

28 (b) The director shall by rule prescribe a schedule of penalties for resi-
29 dential training facilities and residential training homes that are not in
30 compliance with ORS 443.400 to 443.455.

31 (3) The Director of the Oregon Health Authority shall by rule prescribe

1 a schedule of penalties for residential treatment facilities and residential
2 treatment homes that are not in compliance with ORS 443.400 to 443.455.

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

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

13 (b) "Rape" means rape in the first degree as defined in ORS 163.375, rape
14 in the second degree as defined in ORS 163.365 and rape in the third degree
15 as defined in ORS 163.355.

16 (c) "Serious injury" means physical injury that creates a substantial risk
17 of death or that causes serious and protracted disfigurement, protracted
18 impairment of health or protracted loss or impairment of the function of any
19 bodily organ.

20 (d) "Sexual abuse" means any form of sexual contact between an employee
21 of a residential facility or a person providing services in the residential fa-
22 cility and a resident of that facility, including but not limited to sodomy,
23 sexual coercion, sexually explicit photographing and sexual harassment.

24 (5) Civil penalties recovered from a residential training facility, residen-
25 tial training home, residential treatment facility or residential treatment
26 home shall be deposited in the [*Long Term Care Ombudsman*] **Office of the**
27 **Residential Facilities Ombudsman subaccount in the Office of Oregon**
28 **Ombudsmen Account** established in [*ORS 441.419*] **section 2 of this 2019**
29 **Act.**

30 **SECTION 40.** ORS 443.447 is amended to read:

31 443.447. (1) The Quality Measurement Council is established in the De-

1 partment of Human Services to prescribe how the department shall imple-
2 ment the Residential Care Quality Measurement Program established under
3 ORS 443.446.

4 (2) The council consists of eight members, appointed by the Governor, as
5 follows:

6 (a) One individual representing the Oregon Patient Safety Commission;

7 (b) One individual representing residential care facilities;

8 (c) One consumer representative from an Alzheimer’s advocacy organiza-
9 tion;

10 (d) One licensed health care practitioner with experience in geriatrics;

11 (e) Two individuals associated with an academic institution who have
12 expertise in research using data and analytics and in community-based care
13 and quality reporting;

14 (f) The [*Long Term Care*] **Residential Facilities** Ombudsman or a
15 designee of the [*Long Term Care*] **Residential Facilities** Ombudsman; and

16 (g) One individual representing the department.

17 (3)(a) On and after January 1, 2022, the council may update by rule the
18 quality metrics to be reported by residential care facilities under ORS
19 443.446.

20 (b) In developing quality metrics the council shall consider whether the
21 data that must be reported reflect and promote quality care and whether
22 reporting the data is unnecessarily burdensome on residential care facilities.

23 **SECTION 41.** ORS 443.825 is amended to read:

24 443.825. All penalties recovered under ORS 443.790 to 443.815 shall be
25 deposited[:]

26 [(1) *In the Quality Care Fund established in ORS 443.001 if paid by an*
27 *adult foster home licensed to provide residential care to persons with physical*
28 *disabilities.*]

29 [(2) *In the Long Term Care Ombudsman Account established in ORS*
30 *441.419 if paid by an adult foster home licensed to provide care to persons with*
31 *mental illness or developmental disabilities*] **in the Residential Facilities**

1 **Ombudsman subaccount in the Office of Oregon Ombudsmen Account**
2 **established in section 2 of this 2019 Act.**

3 **SECTION 42.** ORS 443.878 is amended to read:

4 443.878. (1) As used in this section:

5 (a) “Elderly person” means a person who is 65 years of age or older;

6 (b) “Person with a disability” has the meaning given that term in ORS
7 410.040; and

8 (c) “Psychotropic medication” has the meaning given that term in ORS
9 418.517.

10 (2) The Department of Human Services, in collaboration with the State
11 Board of Pharmacy, the Oregon Medical Board, the Oregon State Board of
12 Nursing, **the Residential Facilities Ombudsman** and the Long Term Care
13 Ombudsman, shall adopt rules related to the prescription of a psychotropic
14 medication to an elderly person or a person with a disability who resides in:

15 (a) An adult foster home, as defined in ORS 443.705;

16 (b) A residential care facility, as defined in ORS 443.400; or

17 (c) A long term care facility, as defined in ORS 442.015.

18 (3) The requirements of this section do not apply to an elderly person or
19 person with a disability in a hospice program, as defined in ORS 443.850.

20 (4) The rules adopted under subsection (2) of this section must include,
21 but are not limited to, requirements that:

22 (a) If a prescription of psychotropic medication is written by a licensed
23 health care practitioner other than the primary care provider or mental
24 health care provider, or other licensed health care practitioner designated
25 by the department, of the elderly person or person with a disability, the
26 prescription must be reviewed by the primary care provider or mental health
27 care provider, or other licensed health care practitioner designated by the
28 department, of the elderly person or person with a disability to:

29 (A) Limit the adverse side effects of the psychotropic medication; and

30 (B) Ensure that the psychotropic medication is prescribed in the lowest
31 possible effective dosage;

1 (b) A licensed health care practitioner other than the primary care pro-
2 vider or mental health care provider, or other licensed health care practi-
3 tioner designated by the department, of the elderly person or person with a
4 disability who prescribes a psychotropic medication notify the primary care
5 provider or mental health care provider, or other licensed health care prac-
6 titioner designated by the department, of the elderly person or person with
7 a disability of the prescription not later than 24 hours after issuing the
8 prescription;

9 (c) Psychotropic medication prescribed by a licensed health care practi-
10 tioner other than the primary care provider or mental health care provider,
11 or other licensed health care practitioner designated by the department, of
12 the elderly person or person with a disability may be in an amount sufficient
13 for a seven-day supply; and

14 (d) The facility or home in which the elderly person or person with a
15 disability resides demonstrates that:

16 (A) A person-centered assessment has been performed for the elderly per-
17 son or person with a disability; and

18 (B) Based on the findings of the assessment, the best course of treatment,
19 including the use of nonpharmacological interventions, psychotropic
20 medication or a combination of nonpharmacological interventions and
21 psychotropic medication, is followed.

22 (5) The department may adopt other rules necessary to carry out the
23 provisions of this section.

24

25

**OFFICE OF THE OREGON PUBLIC GUARDIAN
AND CONSERVATOR**

26

27

28 **SECTION 43. Sections 44 to 47 of this 2019 Act are added to and**
29 **made a part of ORS 125.675 to 125.691.**

30 **SECTION 44. The Office of the Oregon Public Guardian and**
31 **Conservator is established to:**

1 (1) Provide guardianship and conservator services described in ORS
2 125.675 to 125.691 to persons in need of public guardian and conservator
3 services who are located in areas of this state where public guardian
4 and conservator programs, services and other assistance are inade-
5 quate or nonexistent; and

6 (2) Identify and coordinate programs, services and other assistance
7 that are available statewide for such persons.

8 SECTION 45. (1) There is established an Oregon Public Guardian
9 and Conservator Advisory Committee consisting of five members ap-
10 pointed by the Governor, two of whom must have expertise in the
11 provision of guardianship, conservatorship and other fiduciary services
12 for persons with inadequate resources.

13 (2) Members of the committee are subject to confirmation by the
14 Senate under ORS 171.562 and 171.565.

15 (3) The term of office of each member is four years. Before the ex-
16 piration of the term of a member, the Governor shall appoint a suc-
17 cessor whose term begins on July 1 next following. A member is
18 eligible for reappointment. If there is a vacancy for any cause, the
19 Governor shall make an appointment to become immediately effective
20 for the unexpired term.

21 (4) The committee shall select one of its members as chairperson
22 and another as vice chairperson, for such terms and with duties and
23 powers necessary for the performance of the functions of such offices
24 as the committee determines.

25 (5) A majority of the members of the committee constitutes a quo-
26 rum for the transaction of business. Decisions may be made by a ma-
27 jority of the quorum.

28 (6) The committee shall meet at least once each month at a place,
29 day and hour determined by the committee. The committee also shall
30 meet at other times and places specified by the call of the chairperson
31 or of a majority of the members of the committee. The committee

1 shall confer each month with the Oregon Public Guardian and
2 Conservator. All meetings are subject to ORS 192.610 to 192.690.

3 (7) Members of the committee are not entitled to compensation or
4 reimbursement for expenses and serve as volunteers on the committee.

5 **SECTION 46.** The Oregon Public Guardian and Conservator Advi-
6 sory Committee shall:

7 (1) Monitor the Office of the Oregon Public Guardian and
8 Conservator.

9 (2) Advise the Governor and the Legislative Assembly on the Office
10 of the Oregon Public Guardian and Conservator.

11 (3) Nominate, after interviews and according to prescribed criteria,
12 three persons to fill the Oregon Public Guardian and Conservator po-
13 sition or to fill a vacancy in the position.

14 **SECTION 47.** The Oregon Public Guardian and Conservator shall
15 establish procedures to maintain the confidentiality of the records and
16 files related to guardianship or conservator services.

17 **SECTION 48.** ORS 125.678 is amended to read:

18 125.678. (1) The [*Long Term Care Ombudsman appointed under ORS*
19 *441.403, in consultation with the Residential Ombudsman and Public*
20 *Guardianship Advisory Board,*] **Governor** shall appoint the Oregon Public
21 Guardian and Conservator [*in the office of the Long Term Care*
22 *Ombudsman*] for a four-year term. The Oregon Public Guardian and
23 Conservator serves at the pleasure of the [*Long Term Care Ombudsman*]
24 **Governor** and may be removed by the [*Long Term Care Ombudsman*] **Gov-**
25 **ernor** for good cause. If there is a vacancy **in the position** for any cause,
26 the [*Long Term Care Ombudsman*] **Governor** shall make an appointment
27 [*within*] **no later than 60 days after the vacancy occurs.** The Oregon
28 Public Guardian and Conservator shall receive a salary as fixed by the [*Long*
29 *Term Care Ombudsman*] **Governor** and be reimbursed for all reasonable
30 travel and other expenses incurred in the performance of official duties.

31 (2) The Oregon Public Guardian and Conservator shall be responsible for

1 carrying out the powers, duties and functions of the Oregon Public Guardian
2 and Conservator pursuant to ORS 125.675 to 125.691[, *within the office of the*
3 *Long Term Care Ombudsman*].

4 (3) The Oregon Public Guardian and Conservator may:

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

9 (b) Prescribe the duties and assignments of persons hired or under con-
10 tract with the Oregon Public Guardian and Conservator;

11 (c) Fix the compensation, including reasonable travel and other expenses
12 incurred in the performance of official duties, of persons hired by or under
13 contract with the Oregon Public Guardian and Conservator subject to the
14 State Personnel Relations Law; and

15 (d) Adopt rules to carry out the provisions of ORS 125.675 to 125.691.

16 (4) The [*Long Term Care Ombudsman*] **Oregon Public Guardian and**
17 **Conservator** may hire or contract with staff to serve in the Office of the
18 [*Long Term Care Ombudsman*] **Oregon Public Guardian and Conservator**
19 as necessary to advise and support the **Office of the** Oregon Public Guard-
20 ian and Conservator.

21 (5)(a) The Oregon Public Guardian and Conservator may delegate the ex-
22 ercise or discharge of any power, duty or function that is vested in or im-
23 posed by law upon the Oregon Public Guardian and Conservator to a deputy
24 public guardian and conservator, staff person or volunteer hired by or under
25 contract with the Oregon Public Guardian and Conservator as appropriate
26 for the purpose of conducting an official act in the name of the Oregon
27 Public Guardian and Conservator. The official act of any person acting in
28 the name of the Oregon Public Guardian and Conservator by the authority
29 of the Oregon Public Guardian and Conservator is an official act of the
30 Oregon Public Guardian and Conservator.

31 (b) Notwithstanding paragraph (a) of this subsection, a court may not

1 appoint a deputy public guardian and conservator as a fiduciary in a pro-
2 ceeding under ORS 125.675 to 125.691 but shall appoint the Oregon Public
3 Guardian and Conservator as the fiduciary in the proceeding.

4 (6) The Oregon Public Guardian and Conservator may solicit and accept
5 gifts, grants and donations from public and private sources for the purpose
6 of carrying out the provisions of ORS 125.675 to 125.691, which moneys shall
7 be deposited in the Oregon Public Guardian and Conservator Fund estab-
8 lished under ORS 125.689.

9 **SECTION 49.** ORS 125.680 is amended to read:

10 125.680. The Oregon Public Guardian and Conservator shall:

11 (1) Educate the public about the role and function of the **Office of the**
12 Oregon Public Guardian and Conservator and about public guardian and
13 conservator services.

14 (2) Provide public guardian and conservator services for persons who do
15 not have relatives or friends willing or able to assume the duties of
16 guardianship or conservatorship and who lack the financial resources to ob-
17 tain a private guardian or conservator.

18 (3) Certify deputy public guardians and conservators.

19 (4) Develop model standards of eligibility and professional conduct for
20 deputy public guardians and conservators and of practice and procedure in
21 public guardianship and conservatorship proceedings.

22 (5) Develop and implement training and educational materials for deputy
23 public guardians and conservators.

24 (6) Establish and operate a program to recruit, train and supervise vol-
25 unteers to provide assistance to the **Office of the** Oregon Public Guardian
26 and Conservator, deputy public guardians and conservators and clients.

27 (7) Establish a process, including criteria and standards, to determine the
28 eligibility of persons to receive public guardian and conservator services and
29 for the needs assessment required under ORS 125.683.

30 (8) Cooperate with offices of county public guardian and conservator op-
31 erating under ORS 125.700.

1 (9) Work with existing local and county programs and with other organ-
2 izations and entities to develop and expand public guardian and conservator
3 services in this state.

4 (10) Make recommendations to the Legislative Assembly for policy and
5 legislation regarding implementation, improvement and expansion of public
6 guardian and conservator services in this state.

7

8

CONFORMING AMENDMENTS

9

10 **SECTION 50.** ORS 21.007 is amended to read:

11 21.007. It is the intent of the Legislative Assembly that funding be pro-
12 vided to the following entities by appropriations each biennium to fund pro-
13 grams, services and activities that were funded through court fees before the
14 2011-2013 biennium:

15 (1) To the counties of this state for the purposes of funding mediation
16 services, conciliation services and other services in domestic relations cases.

17 (2) To the counties of this state for the purposes of funding the operation
18 of law libraries or of providing law library services.

19 (3) To Portland State University and the University of Oregon to fund the
20 programs and expenses of the Mark O. Hatfield School of Government and
21 the University of Oregon School of Law under ORS 36.100 to 36.238 and
22 183.502.

23 (4) To the Housing and Community Services Department for the purpose
24 of funding programs that defray the cost of rent for dwelling units for very
25 low income households.

26 (5) To the Higher Education Coordinating Commission to fund clinical
27 legal education programs at accredited institutions of higher education that
28 provide civil legal services to victims of domestic violence, stalking or sexual
29 assault.

30 (6) To the State Department of Agriculture for the purpose of funding
31 mediation programs established by the department, other than individual

1 farm credit mediations.

2 (7) To the Judicial Department for the purposes of funding the appellate
3 settlement program established under ORS 2.560.

4 (8) To the [*Department of Human Services*] **Office of the Foster Child**
5 **Ombudsman** for the funding of the Office of Children's Advocate.

6 **SECTION 51.** ORS 125.060 is amended to read:

7 125.060. (1) The notices required by this section must be given to all per-
8 sons whose identities and addresses can be ascertained in the exercise of
9 reasonable diligence by the person required to give the notice.

10 (2) Notice of the filing of a petition for the appointment of a fiduciary
11 or entry of other protective order must be given by the petitioner to the
12 following persons:

13 (a) The respondent, if the respondent has attained 14 years of age.

14 (b) The spouse, parents and adult children of the respondent.

15 (c) If the respondent does not have a spouse, parent or adult child, the
16 person or persons most closely related to the respondent.

17 (d) Any person who is cohabiting with the respondent and who is inter-
18 ested in the affairs or welfare of the respondent.

19 (e) Any person who has been nominated as fiduciary or appointed to act
20 as fiduciary for the respondent by a court of any state, any trustee for a
21 trust established by or for the respondent, any person appointed as a health
22 care representative under the provisions of ORS 127.505 to 127.660 and any
23 person acting as attorney-in-fact for the respondent under a power of attor-
24 ney.

25 (f) If the respondent is a minor, the person who has exercised principal
26 responsibility for the care and custody of the respondent during the 60-day
27 period before the filing of the petition.

28 (g) If the respondent is a minor and has no living parents, any person
29 nominated to act as fiduciary for the minor in a will or other written in-
30 strument prepared by a parent of the minor.

31 (h) If the respondent is receiving moneys paid or payable by the United

1 States through the Department of Veterans Affairs, a representative of the
2 United States Department of Veterans Affairs regional office that has re-
3 sponsibility for the payments to the protected person.

4 (i) If the respondent is receiving moneys paid or payable for public as-
5 sistance provided under ORS chapter 411 by the State of Oregon through the
6 Department of Human Services, a representative of the department.

7 (j) If the respondent is receiving moneys paid or payable for medical as-
8 sistance provided under ORS chapter 414 by the State of Oregon through the
9 Oregon Health Authority, a representative of the authority.

10 (k) If the respondent is committed to the legal and physical custody of the
11 Department of Corrections, the Attorney General and the superintendent or
12 other officer in charge of the facility in which the respondent is confined.

13 (L) If the respondent is a foreign national, the consulate for the
14 respondent's country.

15 (m) Any other person that the court requires.

16 (3) Notice of a motion for the termination of the protective proceedings,
17 for removal of a fiduciary, for modification of the powers or authority of a
18 fiduciary, for approval of a fiduciary's actions or for protective orders in
19 addition to those sought in the petition must be given by the person making
20 the motion to the following persons:

21 (a) The protected person, if the protected person has attained 14 years of
22 age.

23 (b) Any person who has filed a request for notice in the proceedings.

24 (c) Except for a fiduciary who is making a motion, any fiduciary who has
25 been appointed for the protected person.

26 (d) If the protected person is receiving moneys paid or payable by the
27 United States through the Department of Veterans Affairs, a representative
28 of the United States Department of Veterans Affairs regional office that has
29 responsibility for the payments to the protected person.

30 (e) If the protected person is committed to the legal and physical custody
31 of the Department of Corrections, the Attorney General and the superinten-

1 dent or other officer in charge of the facility in which the protected person
2 is confined.

3 (f) Any other person that the court requires.

4 (4) A request for notice under subsection (3)(b) of this section must be in
5 writing and include the name, address and phone number of the person re-
6 questing notice. A copy of the request must be mailed by the person making
7 the request to the petitioner or to the fiduciary if a fiduciary has been ap-
8 pointed. The original request must be filed with the court. The person filing
9 the request must pay the fee specified by ORS 21.135.

10 (5) A person who files a request for notice in the proceedings in the
11 manner provided by subsection (4) of this section is entitled to receive notice
12 from the fiduciary of any motion specified in subsection (3) of this section
13 and of any other matter to which a person listed in subsection (2) of this
14 section is entitled to receive notice under a specific provision of this chapter.

15 (6) If the Department of Human Services is nominated as guardian for the
16 purpose of consenting to the adoption of a minor, the notice provided for in
17 this section must also be given to the minor's brothers, sisters, aunts, uncles
18 and grandparents.

19 (7) In addition to the requirements of subsection (2) of this section, notice
20 of the filing of a petition for the appointment of a guardian for a person who
21 is alleged to be incapacitated must be given by the petitioner to the follow-
22 ing persons:

23 (a) Any attorney who is representing the respondent in any capacity.

24 (b) If the respondent is a resident of a nursing home or residential facil-
25 ity, or if the person nominated to act as fiduciary intends to place the re-
26 spondent in a nursing home or residential facility, the Office of the Long
27 Term Care Ombudsman **or the Office of the Residential Facilities Om-**
28 **budsman.**

29 (c) If the respondent is a resident of a mental health treatment facility
30 or a residential facility for individuals with developmental disabilities, or if
31 the person nominated to act as fiduciary intends to place the respondent in

1 such a facility, the system described in ORS 192.517 (1).

2 (8) In addition to the requirements of subsection (3) of this section, in a
3 protective proceeding in which a guardian has been appointed, notice of the
4 motions specified in subsection (3) of this section, and the address, telephone
5 number and other contact information of the protected person, must be given
6 by the person making the motion to the following persons:

7 (a) Any attorney who represented the protected person at any time during
8 the protective proceeding.

9 (b) If the protected person is a resident of a nursing home or residential
10 facility, or if the motion seeks authority to place the protected person in a
11 nursing home or residential facility, the Office of the Long Term Care Om-
12 budsman **or the Office of the Residential Facilities Ombudsman.**

13 (c) If the protected person is a resident of a mental health treatment fa-
14 cility or a residential facility for individuals with developmental disabilities,
15 or if the motion seeks authority to place the protected person in such a fa-
16 cility, the system described in ORS 192.517 (1).

17 (9) A respondent or protected person may not waive the notice required
18 under this section.

19 (10) The requirement that notice be served on an attorney for a respond-
20 ent or protected person under subsection (7)(a) or (8)(a) of this section does
21 not impose any responsibility on the attorney receiving the notice to repre-
22 sent the respondent or protected person in the protective proceeding.

23 **SECTION 52.** ORS 125.075 is amended to read:

24 125.075. (1) Any person who is interested in the affairs or welfare of a
25 respondent or protected person may present objections to a petition or to a
26 motion in a protective proceeding, including but not limited to:

27 (a) Any person entitled to receive notice under ORS 125.060.

28 (b) Any stepparent or stepchild of the respondent or protected person.

29 (c) Any other person the court may allow.

30 (2) Objections to a petition may be either written or oral. Objections to
31 a motion must be in writing, except that a protected person may object orally

1 in person or by other means that are intended to convey the protected
2 person's objections to the court. Objections to a petition or to a motion
3 must be made or filed with the court within 15 days after notice of the pe-
4 tition or motion is served or mailed in the manner prescribed by ORS 125.065.
5 The court shall designate the manner in which oral objections may be made
6 that ensures that a protected person will have the protected person's ob-
7 jection presented to the court. The clerk of the court shall provide a means
8 of reducing the oral objections to a signed writing for the purpose of filing
9 the objection.

10 (3) If objections are presented by any of the persons listed in subsection
11 (1) of this section, the court shall schedule a hearing on the objections. The
12 petitioner or person making the motion shall give notice to all persons en-
13 titled to notice under ORS 125.060 (3) of the date, time and place of the
14 scheduled hearing at least 15 days before the date set for hearing. Notice
15 shall be given in the manner prescribed by ORS 125.065.

16 (4) Notwithstanding ORS 21.170, the court may not charge or collect any
17 fee for the filing of objections under the provisions of this section or for the
18 filing of any motion from any of the following:

19 (a) The respondent or the protected person;

20 (b) The Office of the Long Term Care Ombudsman **or the Office of the**
21 **Residential Facilities Ombudsman;** or

22 (c) The system described in ORS 192.517 (1).

23 (5) The court for good cause shown may provide for a different method
24 or time of giving notice under subsection (3) of this section.

25 **SECTION 53.** ORS 125.687 is amended to read:

26 125.687. (1) A court may not appoint the Oregon Public Guardian and
27 Conservator as a fiduciary for a person unless the Oregon Public Guardian
28 and Conservator has petitioned for or consented to the appointment. If ap-
29 pointed as a fiduciary by the court, the Oregon Public Guardian and
30 Conservator, and any deputy public guardian and conservator designated to
31 act on behalf of the Oregon Public Guardian and Conservator, shall serve

1 as provided in this chapter and ORS 127.005 and 127.015, except as expressly
2 stated otherwise in ORS 125.675 to 125.691 or by order of the court.

3 (2) The Oregon Public Guardian and Conservator shall file an official
4 bond in an amount determined in consultation with the Oregon Department
5 of Administrative Services. The bond shall inure to the joint benefit of the
6 several public guardianship and conservatorship estates in which the Oregon
7 Public Guardian and Conservator is providing services, but a bond is not
8 required to be filed in individual estates.

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

13 (4)(a) The court shall order the client or the client's estate to pay for
14 reasonable expenses incurred, including compensation for services rendered,
15 in the provision of public guardian and conservator services to the client,
16 including but not limited to court costs and attorney fees.

17 (b) If a client is indigent, the Oregon Public Guardian and Conservator
18 shall have a claim against the client or the client's estate for the portion
19 of any payment ordered under paragraph (a) of this subsection that remains
20 unpaid.

21 (5) The court may not order the Oregon Public Guardian and
22 Conservator[,] **or** a deputy public guardian and conservator [*or the office of*
23 *the Long Term Care Ombudsman*] to pay court costs or attorney fees in a
24 proceeding brought on behalf of a client under ORS 125.675 to 125.691.

25 **SECTION 54.** ORS 443.380 is amended to read:

26 443.380. As used in ORS 443.380 to 443.394:

27 (1) "Administrative action" means an action, inaction or decision by an
28 owner, employee or agent of a residential facility or by a state, local, social
29 service or health agency that could affect the health, safety, welfare or
30 rights of residents of the facility.

31 (2) "Designee" means an individual appointed by the Residential Facilities

1 Ombudsman in accordance with ORS 443.386.

2 (3) “Legal representative” means a person to whom a resident or a court
3 has granted legal authority to permit access to the resident’s personal in-
4 formation and medical records.

5 [(4) “Long Term Care Ombudsman” means the individual appointed by the
6 Governor under ORS 441.403.]

7 [(5)] (4) “Resident” means an individual who resides in a residential fa-
8 cility.

9 [(6)(a)] (5)(a) “Residential facility” means one of the following:

10 (A) A residential training facility, as defined in ORS 443.400.

11 (B) A residential training home, as defined in ORS 443.400.

12 (C) A licensed adult foster home as defined in ORS 443.705 that serves
13 persons with mental illness or developmental disabilities.

14 (D) A developmental disability child foster home, as defined in ORS
15 443.830.

16 (E) A residential treatment facility, as defined in ORS 443.400.

17 (F) A residential treatment home, as defined in ORS 443.400.

18 (G) A conversion facility licensed under ORS 443.431.

19 (b) “Residential facility” does not include a:

20 (A) Secured facility housing persons committed under ORS 161.327; or

21 (B) Facility licensed by the Oregon Health Authority to provide alcohol
22 and drug treatment.

23 [(7)] (6) “Residential Facilities Ombudsman Program” means the services
24 provided by the Residential Facilities Ombudsman.

25 **SECTION 55.** ORS 443.738 is amended to read:

26 443.738. (1) Except as provided in subsection (3) of this section, all pro-
27 viders, resident managers and substitute caregivers for adult foster homes
28 shall satisfactorily meet all educational requirements established by the li-
29 censing agency. After consultation with representatives of providers, edu-
30 cators, residents’ advocates and the [*Long Term Care Ombudsman or the*]
31 Residential Facilities Ombudsman, the licensing agency shall adopt by rule

1 standards governing the educational requirements. The rules shall require
2 that a person may not provide care to any resident prior to acquiring edu-
3 cation or supervised training designed to impart the basic knowledge and
4 skills necessary to maintain the health, safety and welfare of the resident.
5 Each provider shall document compliance with the educational requirements
6 for persons subject to the requirements.

7 (2) The rules required under subsection (1) of this section shall include
8 but need not be limited to the following:

9 (a) A requirement that, before being licensed, a provider successfully
10 completes training that satisfies a defined curriculum, including demon-
11 strations and practice in physical caregiving, screening for care and service
12 needs, appropriate behavior toward residents with physical, cognitive and
13 mental disabilities and issues related to architectural accessibility;

14 (b) A requirement that a provider pass a test before being licensed or
15 becoming a resident manager. The test shall evaluate the ability to under-
16 stand and respond appropriately to emergency situations, changes in medical
17 conditions, physicians' orders and professional instructions, nutritional
18 needs, residents' preferences and conflicts; and

19 (c) A requirement that, after being licensed, a provider or resident man-
20 ager successfully completes continuing education as described in ORS
21 443.742.

22 (3) After consultation with representatives of providers, educators,
23 residents' advocates and the [*Long Term Care Ombudsman or the*] Residential
24 Facilities Ombudsman, the licensing agency may adopt by rule exceptions to
25 the training requirements of subsections (1) and (2) of this section for per-
26 sons who are appropriately licensed medical care professionals in Oregon or
27 who possess sufficient education, training or experience to warrant an ex-
28 ception. The licensing agency may not make any exceptions to the testing
29 requirements.

30 (4) The licensing agency may permit a person who has not completed the
31 training or passed the test required in subsection (2)(a) and (b) of this section

1 to act as a resident manager until the training and testing are completed or
2 for 60 days, whichever is shorter, if the licensing agency determines that an
3 unexpected and urgent staffing need exists. The licensed provider must notify
4 the licensing agency of the situation and demonstrate that the provider is
5 unable to find a qualified resident manager, that the person has met the re-
6 quirements for a substitute caregiver for the adult foster home and that the
7 provider will provide adequate supervision.

8 (5) Providers shall serve three nutritionally balanced meals to residents
9 each day. A menu for the meals for the coming week shall be prepared and
10 posted weekly.

11 (6) Providers shall make available at least six hours of activities each
12 week which are of interest to the residents, not including television or
13 movies. The licensing agency shall make information about resources for
14 activities available to providers upon request. Providers or substitute
15 caregivers shall be directly involved with residents on a daily basis.

16 (7) Providers shall give at least 30 days' written notice to the residents,
17 and to the legal representative, guardian or conservator of any resident, be-
18 fore selling, leasing or transferring the adult foster home business or the real
19 property on which the adult foster home is located. Providers shall inform
20 real estate licensees, prospective buyers, lessees and transferees in all writ-
21 ten communications that the license to operate an adult foster home is not
22 transferable and shall refer them to the licensing agency for information
23 about licensing.

24 (8) If a resident dies or leaves an adult foster home for medical reasons
25 and indicates in writing the intent to not return, the provider may not
26 charge the resident for more than 15 days or the time specified in the pro-
27 vider contract, whichever is less, after the resident has left the adult foster
28 home. The provider has an affirmative duty to take reasonable actions to
29 mitigate the damages by accepting a new resident. However, if a resident
30 dies or leaves an adult foster home due to neglect or abuse by the provider
31 or due to conditions of imminent danger to life, health or safety, the provider

1 may not charge the resident beyond the resident's last day in the home. The
2 provider shall refund any advance payments within 30 days after the resident
3 dies or leaves the adult foster home.

4 (9) Chemical and physical restraints may be used only after considering
5 all other alternatives and only when required to treat a resident's medical
6 symptoms or to maximize a resident's physical functioning. Restraints may
7 not be used for discipline of a resident or for the convenience of the adult
8 foster home. Restraints may be used only as follows:

9 (a) Psychoactive medications may be used only pursuant to a prescription
10 that specifies the circumstances, dosage and duration of use.

11 (b) Physical restraints may be used only pursuant to a qualified
12 practitioner's order that specifies the type, circumstances and duration of
13 use in accordance with rules adopted by the licensing agency. The rules
14 adopted by the licensing agency relating to physical restraints shall include
15 standards for use and training.

16 (10) If the physical characteristics of the adult foster home do not en-
17 courage contact between caregivers and residents and among residents, the
18 provider shall demonstrate how regular positive contact will occur. Providers
19 may not place residents who are unable to walk without assistance in a
20 basement, split-level, second story or other area that does not have an exit
21 at ground level. Nonambulatory residents shall be given first floor rooms.

22 (11)(a) The provider may not transfer or discharge a resident from an
23 adult foster home unless the transfer or discharge is necessary for medical
24 reasons, for the welfare of the resident or for the welfare of other residents,
25 or due to nonpayment. In such cases, the provider shall give the resident
26 written notice as soon as possible under the circumstances.

27 (b) The provider shall give the resident and the resident's legal represen-
28 tative, guardian or conservator written notice at least 30 days prior to the
29 proposed transfer or discharge, except in a medical emergency including but
30 not limited to a resident's experiencing an increase in level of care needs or
31 engaging in behavior that poses an imminent danger to self or others. In

1 such cases, the provider shall give the resident written notice as soon as
2 possible under the circumstances.

3 (c) The resident has the right to an administrative hearing prior to an
4 involuntary transfer or discharge. If the resident is being transferred or
5 discharged for a medical emergency, or to protect the welfare of the resident
6 or other residents, as defined by rule, the hearing must be held within seven
7 days of the transfer or discharge. The provider shall hold a space available
8 for the resident pending receipt of an administrative order. ORS 441.605 (4)
9 and the rules thereunder governing transfer notices and hearings for resi-
10 dents of long term care facilities shall apply to adult foster homes.

11 (12) The provider may not include any illegal or unenforceable provision
12 in a contract with a resident and may not ask or require a resident to waive
13 any of the resident's rights.

14 (13) Any lessor of a building in which an adult foster home is located
15 may not interfere with the admission, discharge or transfer of any resident
16 in the adult foster home unless the lessor is a provider or coprovider on the
17 license.

18 **SECTION 56.** ORS 443.767 is amended to read:

19 443.767. (1) When the licensing agency receives a complaint that alleges
20 that a resident of a licensed adult foster home has been injured, abused or
21 neglected, and that the resident's health or safety is in imminent danger, or
22 that the resident has died or been hospitalized, the investigation shall begin
23 immediately after the complaint is received. If the investigator determines
24 that the complaint is substantiated, the licensing agency shall take appro-
25 priate corrective action immediately.

26 (2) When the licensing agency receives a complaint that alleges the ex-
27 istence of any circumstance that could result in injury, abuse or neglect of
28 a resident of a licensed adult foster home, and that the circumstance could
29 place the resident's health or safety in imminent danger, the agency shall
30 investigate the complaint promptly. If the investigator determines that the
31 complaint is substantiated, the agency shall take appropriate corrective

1 action promptly.

2 (3) After public hearing, the licensing agency shall by rule set standards
3 for the procedure, content and time limits for the initiation and completion
4 of investigations of complaints. The time limits shall be as short as possible
5 and shall vary in accordance with the severity of the circumstances alleged
6 in the complaint. In no event shall the investigation exceed a duration of 60
7 days, unless there is an ongoing concurrent criminal investigation, in which
8 case the licensing agency may take a reasonable amount of additional time
9 in which to complete the investigation.

10 (4) The licensing agency shall take no longer than 60 days from the
11 completion of the investigation report to take appropriate corrective action
12 in the case of any complaint that the investigator determines to be substan-
13 tiated.

14 (5)(a) The licensing agency shall mail a copy of the investigation report
15 within seven days of the completion of the report to:

16 (A) The complainant, unless the complainant requests anonymity;

17 (B) The resident, and any person designated by the resident to receive
18 information concerning the resident;

19 (C) The facility; and

20 (D) The [*Office of the Long Term Care*] **Residential Facilities** Ombuds-
21 man.

22 (b) The copy of the report shall be accompanied by a notice that informs
23 the recipient of the right to submit additional evidence.

24 (6)(a) The complaint and the investigation report shall be available to the
25 public at the local office of the licensing agency or the type B area agency,
26 if appropriate. When the licensing agency or type B area agency concludes
27 the investigation of a complaint, the licensing agency or type B area agency
28 shall clearly designate the outcome of the complaint investigation and make
29 the designation available to the public together with the complaint and the
30 investigation report.

31 (b) As used in this subsection, “area agency” has the meaning given that

1 term in ORS 410.040.

2 (7) A copy of the report shall be forwarded to the licensing agency
3 whether or not the investigation report concludes that the complaint is
4 substantiated.

5

6

REPEAL AND OPERATIVE DATES

7

8 **SECTION 57.** Sections 4 to 8, 11 to 15, 28, 30 to 36 and 43 to 47 of this
9 2019 Act and the amendments to statutes by sections 9, 10, 16 to 27,
10 29, 37 to 42 and 48 to 56 of this 2019 Act become operative on January
11 1, 2020.

12 **SECTION 58.** The administrator of the Office of Oregon
13 Ombudsmen shall be appointed without delay and may take any
14 actions before the operative date specified in section 57 of this 2019
15 Act that are necessary to carry out sections 4 to 8, 11 to 15, 28, 30 to
16 36 and 43 to 47 of this 2019 Act and the amendments to statutes by
17 sections 9, 10, 16 to 27, 29, 37 to 42 and 48 to 56 of this 2019 Act on and
18 after the operative date specified in section 57 of this 2019 Act.

19 **SECTION 59.** ORS 441.419 is repealed.

20

21

CAPTIONS

22

23 **SECTION 60.** The unit captions used in this 2019 Act are provided
24 only for the convenience of the reader and do not become part of the
25 statutory law of this state or express any legislative intent in the
26 enactment of this 2019 Act.

27

28

EMERGENCY CLAUSE

29

30 **SECTION 61.** This 2019 Act being necessary for the immediate
31 preservation of the public peace, health and safety, an emergency is

1 **declared to exist, and this 2019 Act takes effect on its passage.**

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