

## LONG TERM CARE OMBUDSMAN

**441.100 Definitions for ORS 441.100 to 441.153.** (1) "Administrative action" means any action or decision made by an owner, employee or agent of a long term care facility or by a public agency that affects the services to residents.

(2) "Committee" means the Long Term Care Advisory Committee.

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

(4) "Long term care facility" means any licensed skilled nursing facility intermediate care facility, as defined in rules adopted under ORS 442.015, adult foster care homes with residents over 60 years of age and residential care facility as defined in ORS 443.400. [1981 c.534 §1; 1985 c.153 §1]

### **441.103 Office of Long Term Care Ombudsman; terms; appointment; confirmation; qualifications.**

(1) The office of the Long Term Care Ombudsman is established. The Long Term Care Ombudsman shall function separately and independently from any other state agency. The Governor shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees nominated by the Long Term Care Advisory Committee established under ORS 441.137. Vacancies shall be filled within 60 days in the same manner as appointments are made, subject to Senate confirmation under ORS 171.562 and 171.565.

(2) The Long Term Care Ombudsman may be removed for just cause, upon recommendation to the Governor by the Long Term Care Advisory Committee.

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

(a) The field of aging;

(b) Health care;

(c) Working with community programs;

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

(e) Working with health care providers;

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

(g) Administrative and managerial experience. [1981 c.534 §2; 1985 c.153 §2]

**441.105** [Amended by 1955 c.464 §1; 1965 c.308 §1; repealed by 1971 c.730 §25]

**441.107 Funding of office.** The funding for the office of the Long Term Care Ombudsman shall include at least one percent of Title III(B) of the Older Americans Act (Public Law 89-73) funding received by this state. [1981 c.534 §3]

**441.109 Duties of ombudsman.** The office of the Long Term Care Ombudsman shall carry out the following duties:

(1) Investigate and resolve complaints made by or for residents of long term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights, including

subpoenaing any person to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to any matter under investigation.

- (2) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as may lead to improvements in the functioning of long term care facilities.
- (3) Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long term care facilities in this state.
- (4) Provide information to public agencies about the problems of residents of long term care facilities.
- (5) Work closely with cooperative associations and citizen groups in this state.
- (6) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.
- (7) Collaborate with the Department of Human Services and the Board of Examiners of Nursing Home Administrators to establish a statewide system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of publicizing improvements and resolving significant problems.
- (8) Appoint designees to serve as local representatives of the office in various districts of the state and regularly monitor their functions.
- (9) Specify qualifications and duties of designees.
- (10) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with the committee.
- (11) Provide periodically, or at least twice annually, a report to the Governor, department and the Legislative Assembly.
- (12) Prepare necessary reports with the assistance of the department. [1981 c.534 §4; 1985 c.153 §3; 2001 c.900 §172]

**441.110** [Amended by 1955 c.464 §2; 1965 c.308 §2; repealed by 1971 c.730 §25]

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

- (1) The ombudsman or designee shall not disclose, except to state agencies, the identity of any resident unless the complainant or the resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the disclosure may be made.
- (2) The identity of any complainant or resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant, shall be confidential. If the complaint becomes the subject of judicial proceedings, the investigative information held by the ombudsman or designee shall be disclosed for the purpose of the proceedings if requested by the court. [1981 c.534 §5]

**441.115** [Amended by 1965 c.308 §3; 1969 c.314 §45; repealed by 1971 c.730 §25]

**441.117 Right of entry into facilities and access to records.** (1) The Long Term Care Ombudsman and each designee shall have the right of entry into long term care facilities at any time considered necessary and reasonable by the ombudsman or the designee for the purpose of:

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

(2) The Long Term Care Ombudsman shall have access to any resident's records, and to records of any public agency necessary to the duties of the office, including records on patient abuse complaints made pursuant to ORS 441.630 to 441.680 and 441.995. Nothing contained in ORS 192.525 or 192.530 is intended to limit the access of the Long Term Care Ombudsman to medical records of residents of long term care facilities. Designees may have access to individual resident's records, including medical records as authorized by the resident or resident's legal representative, if needed to investigate a complaint.

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

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

(5) The resident shall have the right to participate in planning any course of action to be taken on behalf of the resident by the ombudsman or the designee. [1981 c.534 §6; 2001 c.104 §179]

**441.120** [Repealed by 1971 c.730 §25]

**441.121 Report after investigation; referral to other agencies.** Following an investigation, the ombudsman or the designee shall report opinions or recommendations to the party or parties affected thereby and shall attempt to resolve the complaint, using, whenever possible, informal techniques of mediation, conciliation and persuasion. Complaints of conditions adversely affecting residents of long term care facilities, or those threatening the safety or well-being of residents that cannot be resolved in the manner described in this section, shall be referred to an appropriate state agency. Programs that promote the safety or emotional or physical well-being of long term care residents shall be promoted and publicized by the ombudsman and the designees. [1981 c.534 §7]

**441.124 Notice of complaint procedures; posting.** (1) The Long Term Care Ombudsman shall prepare and distribute to each long term care facility in this state a written notice describing the procedures to follow in making a complaint, including the address and telephone number of the ombudsman and local designee, if any.

(2) Within 60 days after November 1, 1981, the administrator of each long term care facility shall post the written notice required by this section in conspicuous places in the facility in accordance with procedures provided by the ombudsman and shall give such notice to any resident and legally appointed guardian, if any. [1981 c.534 §8]

**441.125** [Amended by 1955 c.464 §3; 1971 c.730 §18; repealed by 1977 c.751 §39]

**441.127 Immunity of employees.** (1) Any employee or agent of the long term care facility acting in good faith in discussing patient care pursuant to ORS 441.117 shall have immunity from any civil liability, that might otherwise be incurred or imposed with respect to the making of such report.

(2) Any employee or agent who makes a report pursuant to ORS 441.117 shall not be subjected to any retaliation by any official or other employee of a long term care facility solely for making a report, including but not limited to restriction of otherwise lawful access to the facility or to any resident thereof, or, if an employee, to dismissal or harassment.

(3) The ombudsman or the designee acting in good faith in discussing patient care pursuant to ORS 441.117 shall have immunity from any civil liability, that might otherwise be incurred or imposed with respect to the discussion. [1981 c.534 §9]

**441.130** [Amended by 1955 c.464 §4; 1971 c.730 §19; repealed by 1977 c.751 §39]

**441.131 Appointment of designees; qualifications; duties.** (1) The appointments of designees shall be made in consultation with a local screening committee which may consist of but not be limited to persons representing:

- (a) The area agency on aging.
- (b) The local office of the Department of Human Services.
- (c) The local health department.
- (d) Senior citizens groups in the area.
- (e) Long term care facilities in the area.
- (f) Local elected officials.

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

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

(4) The qualifications of designees shall include experience with long term care facilities or residents thereof or potential residents including the ability to communicate well, to understand laws, rules and regulations, and to be assertive, yet objective.

(5) Experience in either social service, gerontology, nursing or paralegal work shall be preferred.

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

- (a) Promote rapport and trust between the residents, staff of the nursing home and nursing home ombudsman program;
- (b) Assist nursing home residents with participating more actively in determining the delivery of services in long term care facilities;

- (c) Serve as an educational resource;
- (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate agency; and
- (e) Assure equitable resolution of problems.

(7) The duties of the designees are to:

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

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

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

(C) Visit individual residents and resident councils.

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

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

(d) Keep residents and long term care staff informed of the Long Term Care Ombudsman Program.

(e) Periodically review the Patients' Bill of Rights with residents, families, guardians, administrators and staff.

(f) Perform other related duties as specified. [1981 c.534 §10; 1985 c.153 §4]

**441.133 Effect of ORS 441.100 to 441.153 on right to visitors.** Nothing in ORS 441.100 to 441.153 shall affect the right of residents of a long term care facility to see visitors of their choice. [1981 c.534 §11]

**441.135** [Amended by 1955 c.464 §5; 1965 c.308 §4; 1971 c.730 §20; repealed by 1977 c.751 §39]

**441.137 Long Term Care Advisory Committee; appointment; confirmation; term; qualifications.** (1) There is established a Long Term Care Advisory Committee of seven members to be appointed in the following manner:

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

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

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

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

(e) Two persons, from a list of four names submitted by the organizations of seniors, appointed by the Governor; and

(f) One person appointed by the Governor.

(2) All members are subject to confirmation by the Senate under ORS 171.562 and 171.565.

(3) The term of office of each member is four years. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is

eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) The members of the committee must be citizens of this state who are broadly representative to the extent possible of persons over 55 years of age, including disabled persons and members of racial and ethnic minorities, who have knowledge and interest in the problems of the elderly and are representative of all areas of the state. At least five members shall be at least 60 years of age. [1985 c.153 §6; 1989 c.224 §93]

**441.140** [Amended by 1955 c.464 §6; 1971 c.730 §21; 1977 c.751 §31; renumbered 442.350]

**441.142 Duties.** The Long Term Care Advisory Committee shall:

(1) Monitor the Long Term Care Ombudsman Program.

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

(3) Nominate, after interviews and according to prescribed criteria, three persons to fill the office of Long Term Care Ombudsman. [1985 c.153 §11]

**441.145** [Amended by 1955 c.464 §7; 1965 c.308 §5; 1965 c.439 §5; 1971 c.730 §22; repealed by 1977 c.751 §39]

**441.146 Appeal to Long Term Care Advisory Committee.** (1) A long term care facility that files a complaint against a designee appointed under ORS 441.131 and objects to the action of the Long Term Care Ombudsman in resolving the complaint may appeal the ombudsman's action to a panel of the Long Term Care Advisory Committee.

(2) The committee on its own motion may review any action by the ombudsman appealable under this section. The review shall provide an opportunity for written and oral presentation by the long term care facility and the ombudsman. The committee shall issue its findings and any instructions to the ombudsman in written form consistent with the federal Older Americans Act.

(3) If the committee disagrees with the action of the ombudsman, the committee may refer the resolution back to the ombudsman with instructions consistent with the federal Older Americans Act to conform the ombudsman's action in the matter to the recommendations of the committee. [1995 c.789 §1]

**Note:** 441.146 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**441.147 Officers; quorum; meetings; expenses.** (1) The Long Term Care Advisory Committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.

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

(3) The committee shall meet at least once each month at a place, day and hour determined by the committee. The committee also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. The committee shall confer each month with the Long Term Care Ombudsman.

(4) A member of the Long Term Care Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.153 §§8,9,10]

**441.150** [Amended by 1971 c.730 §23; repealed by 1977 c.751 §39]

**441.153 Long Term Care Ombudsman Account.** The Long Term Care Ombudsman Account is established separate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for carrying out the responsibilities of the Long Term Care Ombudsman. [1985 c.153 §14 (3); 2001 c.716 §29]