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**SENATE BILL 6564**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators O'Ban, Fain, Keiser, McAuliffe, Hobbs, Conway, Angel, Frockt, and Warnick

AN ACT Relating to persons with developmental disabilities; amending RCW 43.190.010, 43.190.020, 43.190.030, and 43.190.040; and adding a new section to chapter 71A.12 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 71A.12 RCW to read as follows:

(1) The legislature finds and declares that the prevalence of the abuse and neglect of individuals with developmental disabilities has become an issue that negatively affects the health and well-being of such individuals. In order to address this issue, the state seeks to improve and standardize assessment standards to be used by the developmental disabilities administration and to create a near fatality review system to be conducted by the office of the state long-term care ombuds program.

(2) At every developmental disabilities administration annual assessment, the case manager is required to meet with both the client and the client's respondent in an in-person setting whenever it is practicable to do so.

(3) At every developmental disabilities administration annual assessment, the case manager is required to inspect the client's living quarters and include the condition in his or her report of the assessment whenever it is possible to do so. If the case manager is unable to inspect the client's living quarters for any reason, the case manager must note this in his or her report along with the reason given for why the inspection is not practicable at the current time.

(4) The department is required to randomly select at least ten percent of all homes that require an annual developmental disabilities administration assessment to receive an unannounced visit from a developmental disabilities administration case manager in each calendar year. The department shall set rules for such unannounced visits consistent with the purpose of protecting the health and safety of developmental disabilities administration clients. If any home is not able to be randomly visited at the determined time for any given reason, the department shall schedule a follow-up visit to occur within the next thirty calendar days.

(5)(a) In the event of a near fatality of a developmentally disabled person who is in the care of or receiving services from the department or a supervising agency, who has been in the care of or received services from the department or a supervising agency within three years preceding the near fatality, or who was the subject of an investigation by the department for possible abuse or neglect, the department shall promptly notify the office of the state long-term care ombuds which shall conduct a review of the near fatality.

(b) For the purposes of this subsection, "near fatality" means a severe injury or condition caused by abuse or neglect which results in a person receiving critical care for at least twenty-four hours following the person's admission to a critical care unit.

(6) When a case manager or other employee of the department responds to an allegation of the abuse or neglect of a developmentally disabled person that is screened in and open for investigation and there is a subsequent allegation of abuse or neglect resulting in a near fatality within one year of the initial allegation that is screened in and open for investigation, the department must immediately conduct a review of the case manager's and the case manager's supervisor's case files and actions taken during the initial report of the alleged abuse or neglect. The purpose of the review is to determine if there were any errors by the employees under department policy, rule, or statute. If any violations of policy, rule, or statute are found, the department must conduct a formal employee investigation.

**Sec.**  RCW 43.190.010 and 2013 c 23 s 88 are each amended to read as follows:

The legislature finds that in order to comply with the federal older Americans act, provide protection to persons with developmental disabilities, and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, a long-term care ombuds program should be instituted.

**Sec.**  RCW 43.190.020 and 2010 c 94 s 13 are each amended to read as follows:

As used in this chapter, "long-term care facility" means any of the following:

(1) A facility which:

(a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, intellectual disabilities, developmental disabilities, or alcoholism;

(b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. "Long-term health care facility" includes nursing homes and nursing facilities, but does not include acute care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing facility services.

(2) Any family home, group care facility, or similar facility determined by the secretary, for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(3) Any swing bed in an acute care facility.

(4) A client of the developmental disabilities administration's residential services program where one or more of the following services are being provided by the department:

(a) Personal care services;

(b) Supported living services; or

(c) Community residential services.

**Sec.**  RCW 43.190.030 and 2013 c 23 s 89 are each amended to read as follows:

There is created the office of the state long-term care ombuds. The department of commerce shall contract with a private nonprofit organization to provide long-term care ombuds services as specified under, and consistent with, the federal older Americans act as amended, federal mandates, developmental disabilities provisions in Title 71A RCW, the goals of the state, and the needs of its citizens. The department of commerce shall ensure that all program and staff support necessary to enable the ombuds to effectively protect the interests of residents, patients, and clients of all long-term care facilities is provided by the nonprofit organization that contracts to provide long-term care ombuds services. The department of commerce shall adopt rules to carry out this chapter and the long-term care ombuds provisions of the federal older Americans act, as amended, and applicable federal regulations. The long-term care ombuds program shall have the following powers and duties:

(1) To provide services for coordinating the activities of long-term care ombuds throughout the state;

(2) Carry out such other activities as the department of commerce deems appropriate;

(3) Establish procedures consistent with RCW 43.190.110 for appropriate access by long-term care ombuds to long-term care facilities and patients' records, including procedures to protect the confidentiality of the records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident, or upon court order;

(4) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the department of social and health services and to the federal department of health and human services, or its successor agency, on a regular basis; and

(5) Establish procedures to assure that any files maintained by ombuds programs shall be disclosed only at the discretion of the ombuds having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombuds unless:

(a) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or

(b) Such disclosure is required by court order.

**Sec.**  RCW 43.190.040 and 2013 c 23 s 90 are each amended to read as follows:

(1) Any long-term care ombuds authorized by this chapter or a local governmental authority shall have training or experience or both in the following areas:

(a) Gerontology, long-term care, or other related social services programs((~~.~~));

(b) Developmental disabilities;

(c) The legal system((~~.~~)); and

((~~(c)~~)) (d) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(2) A long-term care ombuds shall not have been employed by or participated in the management of any long-term care facility within the past year.

(3) A long-term care ombuds shall not have been employed in a governmental position with direct involvement in the licensing, certification, or regulation of long-term care facilities within the past year.

(4) No long-term care ombuds or any member of his or her immediate family shall have, or have had within the past year, any significant ownership or investment interest in one or more long-term care facilities.

(5) A long-term care ombuds shall not be assigned to a long-term care facility in which a member of that ombuds's immediate family resides.

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