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**SECOND SUBSTITUTE SENATE BILL 6564**

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

**By** Senate Ways & Means (originally sponsored by Senators O'Ban, Fain, Keiser, McAuliffe, Hobbs, Conway, Angel, Frockt, and Warnick)

AN ACT Relating to persons with developmental disabilities; amending RCW 74.34.300; adding new sections to chapter 71A.12 RCW; adding a new chapter to Title 43 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  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 increase visitation of clients who are classified at the highest risk of abuse and neglect based on the presentation of risk factors by developmental disabilities administration case managers, create an independent office of the developmental disabilities ombuds to monitor and report on services to persons with developmental disabilities, and create a fatality and near fatality review system to investigate incidents relating to persons with developmental disabilities which raise suspicions of abuse or neglect.

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

At every developmental disabilities administration annual assessment, the case manager is required to meet with the client in an in-person setting. If the client is receiving personal care services or supported living services, the case manager must ask permission to view the client's living quarters and note his or her observations in the service episode record. If the case manager is unable to view 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 this is not practicable at the current time.

**Sec.**  RCW 74.34.300 and 2008 c 146 s 10 are each amended to read as follows:

(1) The department ((~~may~~)) shall conduct a vulnerable adult fatality review in the event of a death of a vulnerable adult when the department has reason to believe that the death of the vulnerable adult may be related to the abuse, abandonment, exploitation, or neglect of the vulnerable adult, or may be related to the vulnerable adult's self-neglect, and the vulnerable adult was:

(a) Receiving home and community-based services in his or her own home or licensed or certified settings, described under chapters 74.39 ((~~and~~)), 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty days preceding his or her death; or

(b) Living in his or her own home or licensed or certified settings described under chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW and was the subject of a report under this chapter received by the department within twelve months preceding his or her death.

(2)(a)(i) In the event of a near fatality or fatality of an adult who is a client of the developmental disabilities administration or who has been a client of the developmental disabilities administration within one year preceding the near fatality or fatality, or if the adult has been the subject of a report under this chapter within one year preceding the near fatality or fatality, the developmental disabilities administration shall promptly notify the developmental disabilities ombuds. The department may conduct a review of a near fatality at its discretion or at the request of the developmental disabilities ombuds.

(ii) When the department conducts a near fatality or fatality review, the secretary or his or her designee must appoint review team members who must investigate and make recommendations for future measures to improve the department's provision of service.

(iii) The department shall ensure that the fatality or near fatality review team is made up of individuals who had no previous involvement in the case, including individuals whose professional expertise is pertinent to the dynamics of the case. The developmental disabilities ombuds must be invited to participate in the review.

(iv) For the purposes of this section "near fatality" means an incident that, as certified by a physician, places the adult in serious or critical condition.

(b) Upon the conclusion of a fatality or near fatality review required pursuant to this section, the department shall within one hundred eighty days following the fatality or near fatality issue a report to the secretary or his or her designee. An extension may be granted by the department if law enforcement is involved or if there is an official investigation pending with law enforcement, adult protective services, child protective services, residential care services, the department of health, or another investigatory jurisdiction. Exceptions to this time frame may only be authorized by the secretary or his or her designee. The department must report on and distribute review trends and recommendations to the appropriate committees of the legislature and post this information on a public web site.

(c) In any review of a fatality or near fatality in which the adult was placed with or received services from an agency or individual pursuant to a contract with the department, the department and the fatality or near fatality review team shall have access to all records and files regarding the adult or otherwise relevant to the review that have been produced or retained by the agency or individual.

(d)(i) A fatality or near fatality review completed pursuant to this subsection is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(ii) A department employee responsible for conducting a fatality or near fatality review, or member of a fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding: (A) The work of the fatality or near fatality review team; (B) the incident under review; (C) his or her statements, deliberations, thoughts, opinions, analyses, or impressions relating to the work of the fatality or near fatality review team or the incident under review; or (D) the statements, deliberations, thoughts, analyses, or impressions of any other member of the fatality or near fatality review team, or any person who provided information to the fatality or near fatality review team, relating to the work of the fatality or near fatality review team or the incident under review.

(iii)(A) Documents prepared by or for a fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a fatality or near fatality review team.

(B) A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(C) The restrictions set forth in this subsection do not apply in a licensing, disciplinary, or department administrative proceeding based in whole or in part upon allegations of wrongdoing in connection with an adult's death or near fatality reviewed by a fatality or near fatality review team.

(D) Information obtained in a fatality review or near fatality review may be used by an entity investigating a department employee's performance and in any professional or disciplinary proceedings.

(E) The department shall develop and implement procedures to carry out the requirements of this subsection.

(3) When conducting a vulnerable adult fatality review of a person who had been receiving hospice care services before the person's death, the review shall provide particular consideration to the similarities between the signs and symptoms of abuse and those of many patients receiving hospice care services.

((~~(3)~~)) (4) All files, reports, records, communications, and working papers used or developed for purposes of a fatality review are confidential and not subject to disclosure pursuant to RCW 74.34.095.

((~~(4)~~)) (5) The department may adopt rules to implement this section.

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

(1) Referrals for fatality or near fatality reviews to adult protective services or child protective services relating to a person with developmental disabilities may be made by an employee of the developmental disabilities administration or other agencies or mandatory reporters, including but not limited to the department of health, the aging and long-term support administration, the Washington state health care authority, law enforcement, medical care providers, designated mental health professionals, managed care organizations, behavioral health organizations, the developmental disabilities ombuds or long-term care ombuds, and disability rights Washington.

(2) Referrals for fatality or near fatality reviews to adult protective services or child protective services relating to persons who meet the criteria of subsection (1) of this section may also be made by other agencies or mandatory reporters, including but not limited to the department of health, the aging and long-term support administration, the Washington state health care authority, law enforcement, medical care providers, designated mental health professionals, managed care organizations, behavioral health organizations, the developmental disabilities ombuds or long-term care ombuds, and disability rights Washington.

(3) For the purposes of this section, the term "near fatality" has the same meaning as in RCW 74.34.300(2)(b)(iii).

NEW SECTION. **Sec.**  (1) There is created an office of the developmental disabilities ombuds. The department of commerce shall contract with a private, independent nonprofit organization to provide developmental disability ombuds services. The department of commerce shall ensure that the ombuds staff has access to sufficient training or experience with issues relating to persons with developmental disabilities and the program and staff support necessary to enable the ombuds to effectively protect the interests of persons with developmental disabilities. The office of the developmental disabilities ombuds shall have the powers and duties to do the following:

(a) Provide information as appropriate on the rights and responsibilities of persons receiving developmental disability administration services or other state services, and on the procedures for providing these services;

(b) Investigate, upon its own initiative or upon receipt of a complaint, an administrative act related to a person with developmental disabilities alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombuds may decline to investigate any complaint;

(c) Monitor the procedures as established, implemented, and practiced by the department to carry out its responsibilities in the delivery of services to a person with developmental disabilities, with a view toward appropriate preservation of families and ensuring health and safety;

(d) Review periodically the facilities and procedures of state institutions which serve persons with developmental disabilities and state-licensed facilities or residences;

(e) Carry out activities related to fatality and near fatality reviews involving a person with developmental disabilities under RCW 74.13.640 and 74.34.300;

(f) Recommend changes in the procedures for addressing the needs of persons with developmental disabilities;

(g) Submit annually, by November 1st, to the governor and appropriate committees of the legislature a report analyzing the work of the office, including recommendations;

(h) Establish procedures to protect the confidentiality of records and sensitive information to ensure that the identity of any complainant or person with developmental disabilities will not be disclosed without the written consent of the complainant or person, or upon court order;

(i) Maintain independence and authority within the bounds of the duties prescribed by this chapter, insofar as this independence and authority is exercised in good faith and within the scope of contract; and

(j) Carry out such other activities as determined by the department of commerce within the scope of this chapter.

(2) The developmental disabilities ombuds must consult with stakeholders to develop a plan for future expansion of the ombuds into a model of individual ombuds services akin to the operations of the long-term care ombuds. The developmental disabilities ombuds shall report its progress and recommendations related to this subsection to the governor and appropriate committees of the legislature by November 1, 2019.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administration" means the developmental disabilities administration of the department of social and health services.

(2) "Department" means the department of social and health services.

(3) "Ombuds" means the office of the developmental disabilities ombuds.

NEW SECTION. **Sec.**  (1) A developmental disabilities ombuds shall not have participated in the paid provision of services to any person with developmental disabilities within the past year.

(2) A developmental disabilities ombuds shall not have been employed in a governmental position with direct involvement in the licensing, certification, or regulation of a paid developmental disabilities service provider within the past year.

(3) No developmental disabilities ombuds or any member of his or her immediate family may have, or have had within the past year, any significant ownership or investment interest in a paid provider of services to persons with developmental disabilities.

(4) A developmental disabilities ombuds shall not be assigned to investigate a facility or provider of services which provides care or services to a member of that ombuds' immediate family.

NEW SECTION. **Sec.**  The ombuds shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. Investigative records of the office of the ombuds are confidential and are exempt from public disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  (1) Identifying information about complainants or witnesses is not subject to any method of legal compulsion and may not be revealed to the legislature or the governor except under the following circumstances: (a) The complainant or witness waives confidentiality; (b) under a legislative subpoena when there is a legislative investigation for neglect of duty or misconduct by the ombuds or ombuds' office when the identifying information is necessary to the investigation of the ombuds' acts; or (c) under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombuds or ombuds' office when the identifying information is necessary to the investigation of the ombuds' acts.

(2) For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social security number or other identification number, or identification of immediate family members.

NEW SECTION. **Sec.**  The privilege described in section 9 of this act does not apply when:

(1) The ombuds or ombuds' staff member has direct knowledge of an alleged crime, and the testimony, evidence, or discovery sought is relevant to that allegation;

(2) The ombuds or a member of the ombuds' staff has received a threat of, or becomes aware of a risk of, imminent serious harm to any person, and the testimony, evidence, or discovery sought is relevant to that threat or risk; or

(3) The ombuds has been asked to provide general information regarding the general operation of, or the general processes employed at, the ombuds' office.

NEW SECTION. **Sec.**  (1) An employee of the office of the developmental disabilities ombuds is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of the department of commerce, an employee of a contracting agency of the department, a provider of developmental disabilities services, or a recipient of department services for any communication made, or information given or disclosed, to aid the office of the developmental disabilities ombuds in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege serves as a defense in any action in libel or slander.

NEW SECTION. **Sec.**  When the ombuds or ombuds' staff member has reasonable cause to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary proceedings, the ombuds or ombuds' staff member shall report the matter, or cause a report to be made, to the appropriate authorities.

NEW SECTION. **Sec.**  The department and the department of health shall:

(1) Allow the ombuds or the ombuds' designee to communicate privately with any person receiving services from the department, or any person who is part of a fatality or near fatality investigation involving a person with developmental disabilities, for the purposes of carrying out its duties under this chapter;

(2) Permit the ombuds or the ombuds' designee physical access to state institutions serving persons with developmental disabilities and information in the possession of the department concerning state-licensed facilities or residences for the purpose of carrying out its duties under this chapter;

(3) Upon the ombuds' request, grant the ombuds or the ombuds' designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department or the department of health that the ombuds considers necessary in an investigation; and

(4) Grant the office of the developmental disabilities ombuds unrestricted online access to department information and data systems for the purpose of carrying out its duties under this chapter.

NEW SECTION. **Sec.**  The office of the developmental disabilities ombuds shall issue an annual report to the governor and the legislature on the status of the implementation of fatality and near fatality review recommendations for persons with developmental disabilities.

NEW SECTION. **Sec.**  The department of social and health services shall convene a multidisciplinary workgroup to establish guidelines defining the participants, procedures, and standards for near fatality and fatality reviews under RCW 74.34.300(2). The reviews must include consideration of all relevant records, including autopsies in all cases where they are available. The department of social and health services shall invite disability rights Washington and the developmental disabilities ombuds to participate in the workgroup and in any subsequent workgroups that are convened to revise or establish new rules or guidelines defining participants, procedures, or standards for the reviews.

NEW SECTION. **Sec.**  Sections 5 through 14 of this act constitute a new chapter in Title 43 RCW.

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