

2SSB 6564 - S AMD 598

By Senators O'Ban, Darneille

ADOPTED 02/16/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds and declares that
4 the prevalence of the abuse and neglect of individuals with
5 developmental disabilities has become an issue that negatively
6 affects the health and well-being of such individuals. In order to
7 address this issue, the state seeks to increase visitation of clients
8 who are classified at the highest risk of abuse and neglect based on
9 the presentation of risk factors by developmental disabilities
10 administration case managers, and to create an independent office of
11 the developmental disabilities ombuds to monitor and report on
12 services to persons with developmental disabilities.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 71A.12
14 RCW to read as follows:

15 At every developmental disabilities administration annual
16 assessment, the case manager is required to meet with the client in
17 an in-person setting. If the client is receiving personal care
18 services or supported living services, the case manager must ask
19 permission to view the client's living quarters and note his or her
20 observations in the service episode record. If the case manager is
21 unable to view the client's living quarters for any reason, the case
22 manager must note this in his or her report along with the reason
23 given for why this is not practicable at the current time.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 71A.12
25 RCW to read as follows:

26 (1) Within funds dedicated for this purpose, the developmental
27 disabilities administration shall increase home visits for clients
28 identified as having the highest risk of abuse and neglect.

29 (2)(a) The developmental disabilities administration must develop
30 a process to determine which of its clients who receive an annual

1 developmental disabilities assessment are at highest risk of abuse or
2 neglect. The administration may consider factors such as:

3 (i) Whether the client lives with the client's caregiver and
4 receives no other developmental disabilities administration services,
5 or whether the client is largely or entirely dependent on a sole
6 caregiver for assistance, and the caregiver is largely or entirely
7 dependent on the client for his or her income;

8 (ii) Whether the client has limited ability to supervise the
9 caregiver, to express himself or herself verbally, has few community
10 contacts, or no independent person outside the home is identified to
11 assist the client;

12 (iii) Whether the client has experienced a destabilizing event
13 such as hospitalization, arrest, or victimization;

14 (iv) Whether the client has been the subject of an adult
15 protective services or child protective services referral in the past
16 year; or

17 (v) Whether the client lives in an environment that jeopardizes
18 personal safety.

19 (b) The developmental disabilities administration must visit
20 those clients identified as having the highest risk of abuse or
21 neglect at least once every four months, including unannounced visits
22 as needed. This unannounced visit may replace a scheduled visit;
23 however if the case manager is unable to meet with the client, a
24 follow-up visit must be scheduled. A client may refuse to allow an
25 unannounced visit to take place, but this fact must be noted.

26 (3) The developmental disabilities administration may develop
27 rules to implement this section.

28 **Sec. 4.** RCW 74.34.300 and 2008 c 146 s 10 are each amended to
29 read as follows:

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

36 (a) Receiving home and community-based services in his or her own
37 home or licensed or certified settings, described under chapters
38 74.39 (~~and~~), 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty
39 days preceding his or her death; or

1 (b) Living in his or her own home or licensed or certified
2 settings described under chapters 74.39, 74.39A, 18.20, 70.128, and
3 71A.12 RCW and was the subject of a report under this chapter
4 received by the department within twelve months preceding his or her
5 death.

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

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

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

15 NEW SECTION. **Sec. 5.** (1) There is created an office of the
16 developmental disabilities ombuds. The department of commerce shall
17 contract with a private, independent nonprofit organization to
18 provide developmental disability ombuds services. The department of
19 commerce shall designate, by a competitive bidding process, the
20 nonprofit organization that will contract to operate the ombuds. The
21 selection process must include consultation of stakeholders in the
22 development of the request for proposals and evaluation of bids. The
23 selected organization must have experience and the capacity to
24 effectively communicate regarding developmental disabilities issues
25 with policymakers, stakeholders, and the general public and must be
26 prepared and able to provide all program and staff support necessary,
27 directly or through subcontracts, to carry out all duties of the
28 office.

29 (2) The contracting organization and its subcontractors, if any,
30 are not state agencies or departments, but instead are private,
31 independent entities operating under contract with the state.

32 (3) The governor or state may not revoke the designation of the
33 organization contracted to provide the services of the ombuds except
34 upon a showing of neglect of duty, misconduct, or inability to
35 perform duties.

36 (4) The department of commerce shall ensure that the ombuds staff
37 has access to sufficient training or experience with issues relating
38 to persons with developmental disabilities and the program and staff
39 support necessary to enable the ombuds to effectively protect the

1 interests of persons with developmental disabilities. The office of
2 the developmental disabilities ombuds shall have the powers and
3 duties to do the following:

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

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

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

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

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

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

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

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

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

38 (5) The developmental disabilities ombuds must consult with
39 stakeholders to develop a plan for future expansion of the ombuds
40 into a model of individual ombuds services akin to the operations of

1 the long-term care ombuds. The developmental disabilities ombuds
2 shall report its progress and recommendations related to this
3 subsection to the governor and appropriate committees of the
4 legislature by November 1, 2019.

5 NEW SECTION. **Sec. 6.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

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

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

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

14 NEW SECTION. **Sec. 7.** The ombuds shall collaborate and have a
15 memoranda of agreement with the office of the state long-term care
16 ombuds, the office of the family and children's ombuds, Washington
17 protection and advocacy system, the mental health ombuds, and the
18 office of the education ombuds to clarify authority in those
19 situations where their mandates overlap.

20 NEW SECTION. **Sec. 8.** (1) A developmental disabilities ombuds
21 shall not have participated in the paid provision of services to any
22 person with developmental disabilities within the past year.

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

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

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

34 NEW SECTION. **Sec. 9.** The ombuds shall treat all matters under
35 investigation, including the identities of service recipients,
36 complainants, and individuals from whom information is acquired, as

1 confidential, except as far as disclosures may be necessary to enable
2 the ombuds to perform the duties of the office and to support any
3 recommendations resulting from an investigation. Upon receipt of
4 information that by law is confidential or privileged, the ombuds
5 shall maintain the confidentiality of such information and shall not
6 further disclose or disseminate the information except as provided by
7 applicable state or federal law. Investigative records of the office
8 of the ombuds are confidential and are exempt from public disclosure
9 under chapter 42.56 RCW.

10 NEW SECTION. **Sec. 10.** (1) Identifying information about
11 complainants or witnesses is not subject to any method of legal
12 compulsion and may not be revealed to the legislature or the governor
13 except under the following circumstances: (a) The complainant or
14 witness waives confidentiality; (b) under a legislative subpoena when
15 there is a legislative investigation for neglect of duty or
16 misconduct by the ombuds or ombuds' office when the identifying
17 information is necessary to the investigation of the ombuds' acts; or
18 (c) under an investigation or inquiry by the governor as to neglect
19 of duty or misconduct by the ombuds or ombuds' office when the
20 identifying information is necessary to the investigation of the
21 ombuds' acts. Consistently with this section, the ombuds must act to
22 protect sensitive client information.

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

27 NEW SECTION. **Sec. 11.** The privilege described in section 10 of
28 this act does not apply when:

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

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

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

1 NEW SECTION. **Sec. 12.** (1) An employee of the office of the
2 developmental disabilities ombuds is not liable for good faith
3 performance of responsibilities under this chapter.

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

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

19 NEW SECTION. **Sec. 13.** When the ombuds or ombuds' staff member
20 has reasonable cause to believe that any public official, employee,
21 or other person has acted in a manner warranting criminal or
22 disciplinary proceedings, the ombuds or ombuds' staff member shall
23 report the matter, or cause a report to be made, to the appropriate
24 authorities.

25 NEW SECTION. **Sec. 14.** The department and the department of
26 health shall:

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

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

37 (3) Upon the ombuds' request, grant the ombuds or the ombuds'
38 designee the right to access, inspect, and copy all relevant

1 information, records, or documents in the possession or control of
2 the department or the department of health that the ombuds considers
3 necessary in an investigation; and

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

7 NEW SECTION. **Sec. 15.** Sections 5 through 14 of this act
8 constitute a new chapter in Title 43 RCW."

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9 On page 1, line 1 of the title, after "disabilities;" strike the
10 remainder of the title and insert "amending RCW 74.34.300; adding new
11 sections to chapter 71A.12 RCW; adding a new chapter to Title 43 RCW;
12 and creating a new section."

EFFECT: (1) The Developmental Disabilities Administration (DDA)
must increase home visits for clients identified as having the
highest risk for abuse and neglect within funds dedicated for this
purpose. DDA must develop a process to determine who is at highest
risk. Factors are provided which DDA may consider when making this
determination. DDA must visit these individuals at least once every
four months, including unannounced visits as needed.

(2) Provisions are removed requiring the Department of Social and
Health Services to conduct expanded fatality reviews and near-
fatality reviews for DDA clients.

(3) Contracting for the Developmental Disabilities Ombuds
(Ombuds) must be by a competitive bid process including stakeholder
consultation. The Ombuds designation may not be revoked after
selection except upon a showing of neglect of duty, misconduct, or
inability to perform duties.

(4) Memoranda of agreement must be negotiated delineating the
separation of authority of the Ombuds with the Long-Term Care Ombuds,
Office of Family and Children's Ombuds, Washington Protection and
Advocacy System, Mental Health Ombuds, and Office of the Education
Ombuds.

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