
SENATE BILL 5877

State of Washington

62nd Legislature

2011 Regular Session

By Senators Carrell and Zarelli

Read first time 03/16/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the creation of the office of program integrity;
2 amending RCW 49.60.210; adding a new section to chapter 43.09 RCW;
3 adding a new chapter to Title 43 RCW; providing an effective date; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that efforts to combat
7 fraud and abuse in public assistance programs have failed to meet the
8 public's expectation for integrity and accountability around use of
9 their tax dollars. The legislature further finds that it is necessary
10 to fundamentally reorganize the fraud investigative activities within
11 the department of social and health services to ensure accountability
12 for beneficiaries, state employees, and vendors. The legislature
13 declares that in a time of shrinking resources, eliminating waste,
14 fraud, and abuse should be a top priority of the department, and this
15 can best be reflected in a newly organized, accountable, and proactive
16 fraud unit directly under the secretary's authority with the resources
17 necessary to combat fraud and to ensure the confidence of the public in
18 the critical social safety net programs it funds.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Department" means the department of social and health
4 services.

5 (2) "Director" means the director of the office of program
6 integrity.

7 (3) "Disclosable information" means public information that (a) is
8 not exempt from disclosure under chapter 42.17 RCW; and (b) does not
9 pertain to an ongoing investigation.

10 (4) "Fraud" or "abuse" means any intentional action, inaction, or
11 statements made by an individual for the purposes of obtaining public
12 assistance benefits to which he or she is not entitled or the illegal
13 misuse of public assistance benefits once obtained. This does not
14 include provider fraud as it relates to the department's administration
15 of funds under Title XIX of the federal social security act for which
16 the medicaid fraud control unit of the office of the attorney general
17 has jurisdiction.

18 (5) "Office" means the office of program integrity.

19 (6) "Secretary" means the secretary of social and health services.

20 NEW SECTION. **Sec. 3.** The office of program integrity is created
21 within the department to provide a dedicated and accountable unit
22 directly responsible for the following tasks:

23 (1) Conducting and supervising independent and objective
24 investigations relating to allegations of fraud and abuse in any
25 program or service administered by the department including the child
26 care subsidy program administered jointly with the department of early
27 learning;

28 (2) Providing leadership and coordination in recommending policies
29 and procedures designed to detect and prevent fraud and abuse;

30 (3) Informing the secretary, governor, and legislature about
31 vulnerabilities and deficiencies relating to the detection and
32 prevention of fraud and abuse as may be discovered as a result of
33 completed investigations conducted or coordinated by the office;

34 (4) Ensuring that policy, practice, and information technology
35 systems are mitigating the risk for fraud and abuse and appropriate
36 referrals to law enforcement or prosecuting authorities are made when
37 fraud and abuse is suspected; and

1 (5) Assisting the fraud ombudsman in the state auditor's office
2 with his or her responsibilities in auditing and overseeing the
3 activities of the office of program integrity under section 9 of this
4 act.

5 NEW SECTION. **Sec. 4.** The director is the head of the office and
6 is selected by the secretary on the basis of integrity and must
7 demonstrate suitable capacity and experience in law enforcement
8 management, public administration, and criminal investigations. The
9 director shall report directly to the secretary.

10 NEW SECTION. **Sec. 5.** (1) The director shall:

11 (a) Conduct, supervise, and coordinate fraud and abuse
12 investigations and provide policy direction as it relates to program
13 integrity and fraud and abuse;

14 (b) Review proposed legislation and rules relating to the detection
15 and prevention of fraud and abuse in public assistance programs
16 administered by the department, and make recommendations for
17 improvement;

18 (c) Recommend policies for, and conduct, supervise, and coordinate,
19 relationships between other fraud units and federal, state, and local
20 governmental agencies, and nongovernmental entities, with respect to:

21 (i) Matters relating to the prevention and detection of fraud and
22 abuse in programs and operations administered by the department; or

23 (ii) The identification and prosecution of participants in the
24 fraud and abuse;

25 (d) Provide reports to the secretary, governor, and legislature
26 concerning the detection and prevention of fraud and abuse, and make
27 recommendations for improvement of the activities, including changes in
28 the application and eligibility processes for public assistance
29 programs to improve capacity and effectiveness of fraud and abuse
30 investigations;

31 (e) Ensure that front line employees of the office of program
32 integrity have a direct line of communication with the director to
33 address concerns pertaining to their duties and recommend changes to
34 improve the work product of the office;

35 (f) Develop a realistic funding model for adding necessary criminal
36 and fraud investigator staff in a budget neutral fashion;

1 (g) Develop policies and protocols to allow consistent and real-
2 time review of all cash assistance programs administered by the
3 department to assure that benefits are being used for their statutorily
4 stated goals and analyze alternatives to the cash delivery system that
5 are consistent with federal law, cost effective, and can help ensure
6 that benefits are being used for appropriate purposes;

7 (h) Collaborate with other state agencies on common algorithms,
8 risk factors, models, and other data analytics to detect possible fraud
9 and abuse; and

10 (i) Manage fraud investigative tools and resources to effectively
11 balance them between field operations and data analytics.

12 (2) In carrying out the duties and responsibilities established in
13 this chapter, the director must refer all investigations in which the
14 director has found substantial evidence supporting a finding of a
15 violation of federal or state criminal law to the appropriate
16 prosecuting authority for possible criminal prosecution. The director
17 must collaborate with county prosecuting attorneys to increase
18 prosecution of welfare fraud cases and publicize convictions to serve
19 as an effective deterrent on fraud and abuse in public assistance
20 programs.

21 NEW SECTION. **Sec. 6.** (1) The office of program integrity has the
22 authority to apply for and execute all warrants and serve process of
23 law issued by the courts in enforcing the provisions of this chapter.

24 (2) The office has the full authority to administer oaths and take
25 testimony, to issue subpoenas requiring the attendance of witnesses
26 before the office, together with all books, memoranda, papers, and
27 other documents, articles, or instruments, and to compel the disclosure
28 by such witnesses of all facts known to them relative to the matters
29 under investigation.

30 (3) Subpoenas issued in adjudicative proceedings are governed by
31 RCW 34.05.588(1).

32 (4) Subpoenas issued in the conduct of investigations required or
33 authorized by other statutory provisions or necessary in the
34 enforcement of other statutory provisions are governed by RCW
35 34.05.588(2).

1 NEW SECTION. **Sec. 7.** (1) In carrying out the provisions of this
2 chapter, the director shall have prompt access to all individuals,
3 records, electronic data, reports, audits, reviews, documents, and
4 other materials available to the department of revenue, department of
5 labor and industries, department of early learning, employment security
6 department, department of licensing, and any other government entity
7 that can be used to help facilitate investigations of fraud or abuse as
8 determined necessary by the director.

9 (2) Whenever information or assistance requested under subsection
10 (1) of this section is, in the judgment of the director, unreasonably
11 refused or not provided, the director must report the circumstances to
12 the secretary immediately.

13 **Sec. 8.** RCW 49.60.210 and 1992 c 118 s 4 are each amended to read
14 as follows:

15 (1) It is an unfair practice for any employer, employment agency,
16 labor union, or other person to discharge, expel, or otherwise
17 discriminate against any person because he or she has opposed any
18 practices forbidden by this chapter, or because he or she has filed a
19 charge, testified, or assisted in any proceeding under this chapter.

20 (2) It is an unfair practice for a government agency or government
21 manager or supervisor to retaliate against a whistleblower as defined
22 in chapter 42.40 RCW.

23 (3) It is an unfair practice for any employer, employment agency,
24 labor union, government agency, government manager, or government
25 supervisor to discharge, expel, discriminate, or otherwise retaliate
26 against an individual assisting with an office of program integrity
27 investigation under chapter 43.--- RCW (the new chapter created in
28 section 10 of this act), unless the individual has willfully
29 disregarded the truth in providing information to the office.

30 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.09 RCW
31 to read as follows:

32 (1) The auditor shall appoint a fraud ombudsman to oversee and
33 annually audit the work of the office of program integrity within the
34 department of social and health services. The ombudsman shall review
35 the fraud investigative work done by the office including cases filed
36 with local prosecuting authorities. The ombudsman shall also have

1 authority to investigate citizen complaints made to the auditor's
2 office related to fraud or abuse in any public assistance program. The
3 department of social and health services shall provide the ombudsman
4 with access to any relevant records it has in its possession related to
5 a fraud or abuse investigation as determined by the fraud ombudsman,
6 including access to historic and real-time electronic benefit transfer
7 card transaction data.

8 (2) The fraud ombudsman shall have access to front line personnel
9 in the office of program integrity for purposes of interviews and
10 evaluation.

11 (3) The fraud ombudsman must submit a report summarizing its
12 auditing activities of the office to the appropriate committees of the
13 legislature by November 30, 2012, and biennially thereafter. The
14 office of program integrity shall assist the ombudsman to the fullest
15 extent practicable in producing this report. The report shall contain
16 only disclosable information, including:

17 (a) A description of significant fraud or abuse, and of
18 vulnerabilities or deficiencies relating to the prevention and
19 detection of fraud or abuse, discovered as a result of investigations
20 completed during the reporting period;

21 (b) A description of corrective action taken by the department of
22 social and health services regarding fraud and abuse discovered as a
23 result of investigations conducted by the office of program integrity;

24 (c) Recommendations for improving the activities of the office of
25 program integrity with respect to the vulnerabilities or deficiencies
26 identified under (a) of this subsection;

27 (d) An identification of each significant recommendation described
28 in the previous reports on which corrective action has or has not been
29 completed;

30 (e) A summary of matters referred to prosecuting authorities during
31 the reporting period and the charges filed and convictions entered
32 during the reporting period that have resulted from referrals by the
33 office of program integrity;

34 (f) A description of the division of duties within the office of
35 program integrity between fraud early detection and criminal
36 investigative assignments and whether the office has appropriate
37 resources to adequately respond to referrals from the department, other
38 agencies, and the public concerning fraud or abuse;

1 (g) A description of the ease of access allowed by the office of
2 program integrity to all necessary data and personnel for purposes of
3 conducting the audit; and

4 (h) A determination of whether the director has met the
5 requirements in section 4 of this act.

6 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act constitute
7 a new chapter in Title 43 RCW.

8 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 July 1, 2011.

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