

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6564

Chapter 172, Laws of 2016

64th Legislature
2016 Regular Session

PERSONS WITH DEVELOPMENTAL DISABILITIES--ABUSE AND NEGLECT--OMBUDS

EFFECTIVE DATE: 6/9/2016

Passed by the Senate March 8, 2016
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 2016
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2016 3:24 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6564** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 4, 2016

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6564

AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

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)

READ FIRST TIME 02/09/16.

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

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

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

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

17 At every developmental disabilities administration annual
18 assessment, the case manager is required to meet with the client in
19 an in-person setting. If the client is receiving personal care
20 services or supported living services, the case manager must ask

1 permission to view the client's living quarters and note his or her
2 observations in the service episode record. If the case manager is
3 unable to view the client's living quarters for any reason, the case
4 manager must note this in his or her report along with the reason
5 given for why this is not practicable at the current time.

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

8 (1) Within funds appropriated for this purpose, the developmental
9 disabilities administration shall increase home visits for clients
10 identified as having the highest risk of abuse and neglect.

11 (2)(a) The developmental disabilities administration must develop
12 a process to determine which of its clients who receive an annual
13 developmental disabilities assessment are at highest risk of abuse or
14 neglect. The administration may consider factors such as:

15 (i) Whether the client lives with the client's caregiver and
16 receives no other developmental disabilities administration services,
17 or whether the client is largely or entirely dependent on a sole
18 caregiver for assistance, and the caregiver is largely or entirely
19 dependent on the client for his or her income;

20 (ii) Whether the client has limited ability to supervise the
21 caregiver, to express himself or herself verbally, has few community
22 contacts, or no independent person outside the home is identified to
23 assist the client;

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

26 (iv) Whether the client has been the subject of an adult
27 protective services or child protective services referral in the past
28 year; or

29 (v) Whether the client lives in an environment that jeopardizes
30 personal safety.

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

38 (3) The developmental disabilities administration may develop
39 rules to implement this section.

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

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

9 (a) Receiving home and community-based services in his or her own
10 home or licensed or certified settings, described under chapters
11 74.39 (~~and~~), 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty
12 days preceding his or her death; or

13 (b) Living in his or her own home or licensed or certified
14 settings described under chapters 74.39, 74.39A, 18.20, 70.128, and
15 71A.12 RCW and was the subject of a report under this chapter
16 received by the department within twelve months preceding his or her
17 death.

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

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

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

27 NEW SECTION. **Sec. 5.** (1) There is created an office of the
28 developmental disabilities ombuds. The department of commerce shall
29 contract with a private, independent nonprofit organization to
30 provide developmental disability ombuds services. The department of
31 commerce shall designate, by a competitive bidding process, the
32 nonprofit organization that will contract to operate the ombuds. The
33 selection process must include consultation of stakeholders in the
34 development of the request for proposals and evaluation of bids. The
35 selected organization must have experience and the capacity to
36 effectively communicate regarding developmental disabilities issues
37 with policymakers, stakeholders, and the general public and must be
38 prepared and able to provide all program and staff support necessary,

1 directly or through subcontracts, to carry out all duties of the
2 office.

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

6 (3) The governor or state may not revoke the designation of the
7 organization contracted to provide the services of the ombuds except
8 upon a showing of neglect of duty, misconduct, or inability to
9 perform duties.

10 (4) The department of commerce shall ensure that the ombuds staff
11 has access to sufficient training or experience with issues relating
12 to persons with developmental disabilities and the program and staff
13 support necessary to enable the ombuds to effectively protect the
14 interests of persons with developmental disabilities. The office of
15 the developmental disabilities ombuds shall have the powers and
16 duties to do the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 7.** The ombuds shall collaborate and have a
29 memoranda of agreement with the office of the state long-term care
30 ombuds, the office of the family and children's ombuds, Washington
31 protection and advocacy system, the mental health ombuds, and the
32 office of the education ombuds to clarify authority in those
33 situations where their mandates overlap.

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

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

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

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

12 NEW SECTION. **Sec. 9.** The ombuds shall treat all matters under
13 investigation, including the identities of service recipients,
14 complainants, and individuals from whom information is acquired, as
15 confidential, except as far as disclosures may be necessary to enable
16 the ombuds to perform the duties of the office and to support any
17 recommendations resulting from an investigation. Upon receipt of
18 information that by law is confidential or privileged, the ombuds
19 shall maintain the confidentiality of such information and shall not
20 further disclose or disseminate the information except as provided by
21 applicable state or federal law. Investigative records of the office
22 of the ombuds are confidential and are exempt from public disclosure
23 under chapter 42.56 RCW.

24 NEW SECTION. **Sec. 10.** (1) Identifying information about
25 complainants or witnesses is not subject to any method of legal
26 compulsion and may not be revealed to the legislature or the governor
27 except under the following circumstances: (a) The complainant or
28 witness waives confidentiality; (b) under a legislative subpoena when
29 there is a legislative investigation for neglect of duty or
30 misconduct by the ombuds or ombuds' office when the identifying
31 information is necessary to the investigation of the ombuds' acts; or
32 (c) under an investigation or inquiry by the governor as to neglect
33 of duty or misconduct by the ombuds or ombuds' office when the
34 identifying information is necessary to the investigation of the
35 ombuds' acts. Consistently with this section, the ombuds must act to
36 protect sensitive client information.

37 (2) For the purposes of this section, "identifying information"
38 includes the complainant's or witness's name, location, telephone

1 number, likeness, social security number or other identification
2 number, or identification of immediate family members.

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 13.** When the ombuds or ombuds' staff member
34 has reasonable cause to believe that any public official, employee,
35 or other person has acted in a manner warranting criminal or
36 disciplinary proceedings, the ombuds or ombuds' staff member shall

1 report the matter, or cause a report to be made, to the appropriate
2 authorities.

3 NEW SECTION. **Sec. 14.** The department and the department of
4 health shall:

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

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

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

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

Passed by the Senate March 8, 2016.

Passed by the House March 3, 2016.

Approved by the Governor April 1, 2016.

Filed in Office of Secretary of State April 4, 2016.