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**SUBSTITUTE SENATE BILL 6564**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** Senate Human Services, Mental Health & Housing (originally sponsored by Senators O'Ban, Fain, Keiser, McAuliffe, Hobbs, Conway, Angel, Frockt, and Warnick)

READ FIRST TIME 02/05/16.

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 new sections.

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 presentation of risk factors by developmental disabilities  
12 administration case managers, create an independent office of the  
13 developmental disabilities ombuds to monitor and report on services  
14 to persons with developmental disabilities, and create a fatality and  
15 near fatality review system to investigate incidents relating to  
16 persons with developmental disabilities which raise suspicions of  
17 abuse or neglect.

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

1 (1) The developmental disabilities administration must develop a  
2 process to determine which of its clients who receive an annual  
3 developmental disabilities assessment are at highest risk of abuse or  
4 neglect. The administration shall consider factors such as, but not  
5 limited to:

6 (a) Whether the client lives with the client's caregiver and  
7 receives no other developmental disabilities administration services;

8 (b) Whether the client has limited ability to supervise the  
9 caregiver and no independent person outside the home is identified to  
10 assist the client;

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

13 (d) Whether the client is largely or entirely dependent on a sole  
14 caregiver for assistance, and the caregiver is largely or entirely  
15 dependent on the client for his or her income;

16 (e) Whether the client or the caregiver has been the subject of  
17 an adult protective services or child protective services referral in  
18 the past year, or there is an unusual number of unresolved or  
19 unfounded complaints against the client's caregiver;

20 (f) Whether the client lives in an environment that jeopardizes  
21 personal safety;

22 (g) Whether the client lives in a household where there is  
23 substance abuse or mental illness;

24 (h) Whether the client has limited ability to express himself or  
25 herself verbally; and

26 (i) Whether the client has few community contacts.

27 (2) For clients identified as highest risk for abuse and neglect  
28 under subsection (1) of this section, the developmental disabilities  
29 administration must visit those individuals at least once every three  
30 months. At least fifty percent of clients identified as highest risk  
31 must receive an unannounced visit from their developmental  
32 disabilities administration case manager within a calendar year, at  
33 the discretion of the department. This unannounced visit may replace  
34 a scheduled visit; however, if the case manager is unable to meet  
35 with the client, a follow-up visit must be scheduled. A client may  
36 refuse to allow an unannounced visit to take place, but this fact  
37 must be noted.

38 (3) At every developmental disabilities administration annual  
39 assessment, the case manager is required to meet with the client in  
40 an in-person setting. If the client is receiving personal care

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

7 **Sec. 3.** RCW 74.34.300 and 2008 c 146 s 10 are each amended to  
8 read as follows:

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

15 (a) Receiving home and community-based services in his or her own  
16 home or licensed or certified settings, described under chapters  
17 74.39 (~~and~~), 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty  
18 days preceding his or her death; or

19 (b) Living in his or her own home or licensed or certified  
20 settings described under chapters 74.39, 74.39A, 18.20, 70.128, and  
21 71A.12 RCW and was the subject of a report under this chapter  
22 received by the department within twelve months preceding his or her  
23 death.

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

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

38 (iii) The department shall ensure that the fatality or near  
39 fatality review team is made up of individuals who had no previous

1 involvement in the case, including individuals whose professional  
2 expertise is pertinent to the dynamics of the case. The developmental  
3 disabilities ombuds must be invited to participate in the review.

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

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

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

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

32 (ii) A department employee responsible for conducting a fatality  
33 or near fatality review, or member of a fatality or near fatality  
34 review team, may not be examined in a civil or administrative  
35 proceeding regarding: (A) The work of the fatality or near fatality  
36 review team; (B) the incident under review; (C) his or her  
37 statements, deliberations, thoughts, opinions, analyses, or  
38 impressions relating to the work of the fatality or near fatality  
39 review team or the incident under review; or (D) the statements,  
40 deliberations, thoughts, analyses, or impressions of any other member

1 of the fatality or near fatality review team, or any person who  
2 provided information to the fatality or near fatality review team,  
3 relating to the work of the fatality or near fatality review team or  
4 the incident under review.

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

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

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

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

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

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

37 ((+3)) (4) All files, reports, records, communications, and  
38 working papers used or developed for purposes of a fatality review  
39 are confidential and not subject to disclosure pursuant to RCW  
40 74.34.095.

1           (~~(4)~~) (5) The department may adopt rules to implement this  
2 section.

3           NEW SECTION.   **Sec. 4.** A new section is added to chapter 71A.12  
4 RCW to read as follows:

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

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

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

28           NEW SECTION.   **Sec. 5.** (1) There is created an office of the  
29 developmental disabilities ombuds. The department of commerce shall  
30 contract with a private, independent nonprofit organization to  
31 provide developmental disability ombuds services. The department of  
32 commerce shall ensure that the ombuds staff has access to sufficient  
33 training or experience with issues relating to persons with  
34 developmental disabilities and the program and staff support  
35 necessary to enable the ombuds to effectively protect the interests  
36 of persons with developmental disabilities. The office of the  
37 developmental disabilities ombuds shall have the powers and duties to  
38 do the following:

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

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

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

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

19 (e) Carry out activities related to fatality and near fatality  
20 reviews involving a person with developmental disabilities under RCW  
21 74.13.640 and 74.34.300;

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

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

38 (2) 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.** (1) A developmental disabilities ombuds  
15 shall not have participated in the paid provision of services to any  
16 person with developmental disabilities within the past year.

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

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

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

28 NEW SECTION. **Sec. 8.** The ombuds shall treat all matters under  
29 investigation, including the identities of service recipients,  
30 complainants, and individuals from whom information is acquired, as  
31 confidential, except as far as disclosures may be necessary to enable  
32 the ombuds to perform the duties of the office and to support any  
33 recommendations resulting from an investigation. Upon receipt of  
34 information that by law is confidential or privileged, the ombuds  
35 shall maintain the confidentiality of such information and shall not  
36 further disclose or disseminate the information except as provided by  
37 applicable state or federal law. Investigative records of the office



1 of the ombuds are confidential and are exempt from public disclosure  
2 under chapter 42.56 RCW.

3 NEW SECTION. **Sec. 9.** (1) Identifying information about  
4 complainants or witnesses is not subject to any method of legal  
5 compulsion and may not be revealed to the legislature or the governor  
6 except under the following circumstances: (a) The complainant or  
7 witness waives confidentiality; (b) under a legislative subpoena when  
8 there is a legislative investigation for neglect of duty or  
9 misconduct by the ombuds or ombuds' office when the identifying  
10 information is necessary to the investigation of the ombuds' acts; or  
11 (c) under an investigation or inquiry by the governor as to neglect  
12 of duty or misconduct by the ombuds or ombuds' office when the  
13 identifying information is necessary to the investigation of the  
14 ombuds' acts.

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

19 NEW SECTION. **Sec. 10.** The privilege described in section 9 of  
20 this act does not apply when:

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

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

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

31 NEW SECTION. **Sec. 11.** (1) An employee of the office of the  
32 developmental disabilities ombuds is not liable for good faith  
33 performance of responsibilities under this chapter.

34 (2) No discriminatory, disciplinary, or retaliatory action may be  
35 taken against an employee of the department, an employee of the  
36 department of commerce, an employee of a contracting agency of the  
37 department, a provider of developmental disabilities services, or a

1 recipient of department services for any communication made, or  
2 information given or disclosed, to aid the office of the  
3 developmental disabilities ombuds in carrying out its  
4 responsibilities, unless the communication or information is made,  
5 given, or disclosed maliciously or without good faith. This  
6 subsection is not intended to infringe on the rights of the employer  
7 to supervise, discipline, or terminate an employee for other reasons.

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

12 NEW SECTION. **Sec. 12.** When the ombuds or ombuds' staff member  
13 has reasonable cause to believe that any public official, employee,  
14 or other person has acted in a manner warranting criminal or  
15 disciplinary proceedings, the ombuds or ombuds' staff member shall  
16 report the matter, or cause a report to be made, to the appropriate  
17 authorities.

18 NEW SECTION. **Sec. 13.** The department and the department of  
19 health shall:

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

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

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

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

1        NEW SECTION.        **Sec. 14.**        The office of the developmental  
2 disabilities ombuds shall issue an annual report to the governor and  
3 the legislature on the status of the implementation of fatality and  
4 near fatality review recommendations for persons with developmental  
5 disabilities.

6        NEW SECTION.        **Sec. 15.**        The department of social and health  
7 services shall convene a multidisciplinary workgroup to establish  
8 guidelines defining the participants, procedures, and standards for  
9 near fatality and fatality reviews under RCW 74.34.300(2). The  
10 reviews must include consideration of all relevant records, including  
11 autopsies in all cases where they are available. The department of  
12 social and health services shall invite disability rights Washington  
13 and the developmental disabilities ombuds to participate in the  
14 workgroup and in any subsequent workgroups that are convened to  
15 revise or establish new rules or guidelines defining participants,  
16 procedures, or standards for the reviews.

17        NEW SECTION.        **Sec. 16.**        Sections 5 through 14 of this act  
18 constitute a new chapter in Title 43 RCW.

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