
SECOND SUBSTITUTE SENATE BILL 6564

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 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 At every developmental disabilities administration annual
2 assessment, the case manager is required to meet with the client in
3 an in-person setting. If the client is receiving personal care
4 services or supported living services, the case manager must ask
5 permission to view the client's living quarters and note his or her
6 observations in the service episode record. If the case manager is
7 unable to view the client's living quarters for any reason, the case
8 manager must note this in his or her report along with the reason
9 given for why this is not practicable at the current time.

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

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

18 (a) Receiving home and community-based services in his or her own
19 home or licensed or certified settings, described under chapters
20 74.39 (~~and~~), 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty
21 days preceding his or her death; or

22 (b) Living in his or her own home or licensed or certified
23 settings described under chapters 74.39, 74.39A, 18.20, 70.128, and
24 71A.12 RCW and was the subject of a report under this chapter
25 received by the department within twelve months preceding his or her
26 death.

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

37 (ii) When the department conducts a near fatality or fatality
38 review, the secretary or his or her designee must appoint review team

1 members who must investigate and make recommendations for future
2 measures to improve the department's provision of service.

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

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

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

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

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

36 (ii) A department employee responsible for conducting a fatality
37 or near fatality review, or member of a fatality or near fatality
38 review team, may not be examined in a civil or administrative
39 proceeding regarding: (A) The work of the fatality or near fatality
40 review team; (B) the incident under review; (C) his or her

1 statements, deliberations, thoughts, opinions, analyses, or
2 impressions relating to the work of the fatality or near fatality
3 review team or the incident under review; or (D) the statements,
4 deliberations, thoughts, analyses, or impressions of any other member
5 of the fatality or near fatality review team, or any person who
6 provided information to the fatality or near fatality review team,
7 relating to the work of the fatality or near fatality review team or
8 the incident under review.

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

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

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

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

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

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

1 (~~(3)~~) (4) All files, reports, records, communications, and
2 working papers used or developed for purposes of a fatality review
3 are confidential and not subject to disclosure pursuant to RCW
4 74.34.095.

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

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

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

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

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

32 NEW SECTION. **Sec. 5.** (1) There is created an office of the
33 developmental disabilities ombuds. The department of commerce shall
34 contract with a private, independent nonprofit organization to
35 provide developmental disability ombuds services. The department of
36 commerce shall ensure that the ombuds staff has access to sufficient
37 training or experience with issues relating to persons with
38 developmental disabilities and the program and staff support

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

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

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

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

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

23 (e) Carry out activities related to fatality and near fatality
24 reviews involving a person with developmental disabilities under RCW
25 74.13.640 and 74.34.300;

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

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

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 7.** (1) A developmental disabilities ombuds
20 shall not have participated in the paid provision of services to any
21 person with developmental disabilities within the past year.

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

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

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

33 NEW SECTION. **Sec. 8.** The ombuds shall treat all matters under
34 investigation, including the identities of service recipients,
35 complainants, and individuals from whom information is acquired, as
36 confidential, except as far as disclosures may be necessary to enable
37 the ombuds to perform the duties of the office and to support any

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 11.** (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. 12.** 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. 13.** 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. 14.** The office of the developmental
8 disabilities ombuds shall issue an annual report to the governor and
9 the legislature on the status of the implementation of fatality and
10 near fatality review recommendations for persons with developmental
11 disabilities.

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

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

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