

1 **2SHB 1752 - H AMD 354 ADOPTED 3-19-97**

2 By Representative Cooke

3 On page 1, line 4, strike everything after the enacting clause
4 and insert the following:

5 **Sec. 1.** RCW.43.190.010 and 1983 c 290 s 1 are each amended
6 to read as follows:

7 The legislature finds that in order to comply with the federal
8 Older Americans Act, provide protection to persons with
9 developmental disabilities, and to effectively assist residents,
10 patients, and clients of long-term care facilities in the assertion
11 of their civil and human rights, a long-term care ombudsman program
12 should be instituted, and shall include an office of developmental
13 disabilities ombudsman with the separate full-time position of
14 state developmental disabilities ombudsman.

15 **Sec. 2.** RCW 43.190.020 and 1995 1st sp.s. c 18 s 32 are each
16 amended to read as follows:

17 As used in this chapter, long-term care facility- means any
18 of the following:

19 (1) A facility which: As used in this chapter, long-term
20 care facility- means any of the following:

21 (1) A facility which:

22 (a) maintains and operates twenty-four hour skilled nursing
23 services for the care and treatment of chronically ill or
24 convalescent patients, including mental, emotional, or behavioral
25 problems, (~~mental retardation~~) developmental disability, or
26 alcoholism;

27 (b) Provides supportive, restorative, and preventive health
28 services in conjunction with a socially oriented program to its
29 residents, and which maintains and operates twenty-four hour
30 services including board, room, personal care, and intermittent
31 nursing care. Long-term health care facility- includes nursing
32 homes, and nursing facilities, but does not include acute care
33 hospital or other licensed facilities except for that distinct part
34 of the hospital or facility which provides nursing facility
35 services.

1 (2) Any family home, group care facility, or similar facility
2 determined by the (~~secretary~~) director of Community, Trade and
3 Economic Development, for twenty-four hour non-medical care of
4 persons in need of personal services, supervision, or assistance
5 essential for sustaining the activities of daily living or for the
6 protection of the individual.

7 (3) Any swing bed in an acute care facility.

8 **Sec. 3.** RCW 43.190.030 and 1995 c 399 s 105 are each amended
9 to read as follows:

10 There is created the office of the state long-term care
11 ombudsman and the office of the developmental disabilities
12 ombudsman. The department of community, trade, and economic
13 development shall contract (1) with a private nonprofit
14 organization to provide long-term care ombudsman services as
15 specified under, and consistent with, the federal Older Americans
16 act as amended, federal mandates, and (2) with a private nonprofit
17 organization to provide developmental disabilities ombudsman
18 services, consistent with the goals of the developmental
19 disabilities provisions in Title 71A RCW, the goals of the state,
20 and the needs of its citizens. The department of community, trade,
21 and economic develop shall ensure that all program and staff
22 support necessary to enable the (~~ombudsman~~) ombudsmen to
23 effectively protect the interests of residents, patients, and
24 clients of all long-term care facilities is provided by the
25 nonprofit organization that contracts to provide (~~long-term care~~)
26 ombudsman services. The (~~long-term care~~) ombudsman programs
27 shall have the following powers and duties:

28 (1) To provide services for coordinating the activities of
29 (~~long-term care~~) ombudsmen throughout the state;

30 (2) Carry out such other activities as the department of
31 community, trade and economic development deems appropriate;

32 (3) Establish procedures consistent with RCW 43.190.110 for
33 appropriate access by (~~long-term care~~) ombudsmen to long-term
34 care facilities and patients' records, including procedures to
35 protect the confidentiality of the records and ensure that the
36 identity of any complainant or resident will not be disclosed

1 without the written consent of the complainant or resident, or upon
2 court order;

3 (4) Establish a state-wide uniform reporting system to collect
4 and analyze data relating to complaints and conditions in long-term
5 care facilities for the purpose of identifying and resolving
6 significant problems, with provision for submission of such data to
7 the department of social and health services and to the federal
8 department of health and human services, or its successor agency,
9 on a regular basis; and

10 (5) Establish procedures to assure that any files maintained
11 by ombudsman programs shall be disclosed only at the discretion of
12 the ombudsman having authority over the disposition of such files,
13 except that the identity of any complainant or resident of a long-
14 term care facility shall not be disclosed by such ombudsman unless:

15 (a) Such complainant or resident, or the complainant's or
16 resident's legal representative, consents in writing to such
17 disclosure; or

18 (b) Such disclosure is required by court order.

19 **Sec. 4.** RCW 43.190.040 and 1983 c 290 s 4 are each amended to
20 read as follows:

21 (1) Any (~~long-term care~~) ombudsman authorized by this
22 chapter or a local governmental authority shall have training or
23 experience or both in the following areas:

24 (a) Gerontology, long-term care, or other related social
25 services programs (~~(-)~~);

26 (b) Developmental disabilities;

27 (c) The legal system (~~(-)~~); and

28 (e) (d) Dispute or problem resolution techniques, including
29 investigation, mediation, and negotiation.

30 (2) An (~~long-term care~~) ombudsman shall not have been
31 employed by any long-term care facility or program serving the
32 developmentally disabled within the past three years.

33 (3) No (~~long-term care~~) ombudsman or any member of his or
34 her immediate family shall have, or have had within the past three
35 years, any pecuniary interest in the provision of long-term care
36 health care facilities, or program serving the developmentally
37 disabled.

1 **Sec. 5.** RCW 43.190.090 and 1983 c 290 s 9 are each amended to
2 read as follows:

3 (1) No long-term care ombudsman or developmental disabilities
4 ombudsman is liable for good faith performance of responsibilities
5 under this chapter.

6 (2) No discriminatory, disciplinary, or retaliatory action may
7 be taken against any employee of a facility, program or agency, any
8 patient, resident or client of a long-term care facility or
9 individual or agency providing services to persons with
10 developmental disabilities, or any volunteer, for any communication
11 made, or information given or disclosed, to aid the long-term care
12 ombudsman or developmental disabilities ombudsman in carrying out
13 its duties and responsibilities, unless the same was done
14 maliciously and without good faith. This subsection is not
15 intended to infringe on the rights of the employer to supervise,
16 discipline, or terminate an employee for other reasons.

17 (3) All communications by a long-term care ombudsman or
18 developmental disabilities ombudsman, if reasonable related to the
19 requirements of that individual's responsibilities under this
20 chapter and done in good faith, are privileged and that privilege
21 shall serve as a defense to any action in libel or slander.

22 (4) A representative of the offices of long-term care and
23 developmental disabilities ombudsman is exempt from being required
24 to testify in court as to any confidential matters except as the
25 court may deem necessary to enforce this chapter.

26 (5) For the purposes of this chapter, the meaning of
27 retaliatory action- shall be consistent with the definition of
28 reprisal and retaliatory action- in RCW 42.40.050.

29 **NEW SECTION.** **Sec. 6. Separate Office of developmental**
30 **disabilities ombudsman created within the long-term care ombudsman**
31 **program.**

32 (1) The Office of developmental disabilities ombudsman is
33 created within the long-term care ombudsman program. The office
34 shall be charged with protecting the rights and interests of
35 persons with developmental disabilities.

36 (2) State funds appropriated by the legislature in the
37 biennial operating budget for use by the office of developmental

1 disabilities ombudsman shall be awarded to the office of
2 developmental disabilities ombudsman and shall not be diverted to
3 any other provider, person or agency by any state agency or entity,
4 except by action of the legislature.

5 NEW SECTION. Sec. 7. Duties of the department related to the
6 separate developmental disabilities ombudsman program. The
7 department of community, trade and economic development shall,
8 consistent with state and federal laws,

9 (1) Monitor the expenditure of state funds under the contract
10 for appropriate utilization of funds and the fulfillment of state
11 and federal laws;

12 (2) Facilitate the exchange of information among appropriate
13 state agencies and organizations regarding issues relating to the
14 office of developmental disabilities ombudsman;

15 (3) Ensure that the office of developmental disabilities
16 ombudsman has direct access to the directors of state governmental
17 entities with responsibilities that impact on persons with
18 developmental disaffiliate;

19 (4) Provide all program and staff support necessary to carry
20 out the functions provided in subsections (1) through (3) of this
21 section.

22 NEW SECTION. Sec. 8. Office of developmental disabilities
23 ombudsman -- Services to be provided. The office of developmental
24 disabilities ombudsman shall maintain a statewide presence and
25 shall be responsible for protecting the rights and interest of
26 individuals with developmental disabilities as they relate to the
27 provision of services by the state of Washington or by individuals
28 and entities contracting with the state of Washington. The office
29 shall, to the extent that sufficient funds are available:

30 (1) Investigate, provide advocacy, and assist in the
31 resolution of complaints at the lowest possible intervention level.
32 The developmental disabilities ombudsman shall follow the expressed
33 wishes of the individual with developmental disabilities in
34 providing all services;

35 (2) Recruit, train and supervise volunteer ombudsmen to
36 perform the functions of the office of developmental disabilities

1 ombudsman, develop procedures for the certification of volunteer
2 ombudsmen, and develop standards that define the permissible scope
3 of duties of volunteer ombudsmen.

4 NEW SECTION. Sec. 9. Report to the legislature. (1) The
5 office of developmental disabilities ombudsman shall provide the
6 legislature with an annual report that includes:

7 (a) Demographics describing access to the ombudsman program by
8 people with developmental disabilities and their families;

9 (b) A description of the issues identified as frequent in the
10 complaint data;

11 (c) An identification of deficiencies on the part of service
12 providers and systems and recommendations for remedial action;

13 (d) Recommendations for regulatory action by agencies that
14 would improve the quality of life for individuals with
15 developmental disabilities;

16 (e) Recommendations for legislative action that would improve
17 the quality of life for individuals with developmental
18 disabilities.

19 NEW SECTION. Sec. 10. Development of rules providing for
20 right of entry to facilities by developmental disabilities
21 ombudsmen -- Access to residents and records. (1) The department
22 of community, trade and economic development shall adopt such rules
23 as are necessary to establish a right of entry on behalf of
24 developmental disabilities ombudsmen to the residential care
25 facilities identified in this chapter and for reasonable access to
26 residents with developmental disabilities at any time deemed
27 necessary and reasonable by the office of developmental
28 disabilities state ombudsman to effectively carry out the provision
29 of this chapter. Such rules shall make adequate provision for
30 privacy for the purpose of hearing, investigating, resolving
31 complaints, and rendering advice to residents.

32 (2) The department, in cooperation with the department of
33 social and health services, shall in addition adopt rules to ensure
34 reasonable access by ombudsmen to the records of clients of the
35 division of developmental disabilities and to ensure that such

1 access will require the consent of the client or his or her
2 guardian or legal representative.

3 NEW SECTION. Section 11. If any provision of this act or its
4 application to any person or circumstances is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. Sec. 12. This act is necessary for the
8 immediate preservation of the public peace, health, or safety, or
9 support of the state government and its existing public
10 institutions, and takes effect July 1, 1997.

11 NEW SECTION. Sec. 13. If specific funding for the purposes
12 of this act, referencing this act by bill or chapter number, is not
13 provided by June 30, 1997, in the omnibus appropriations act, this
14 act is null and void.-

15 Correct the title.

EFFECT: Creates a separate office of the state developmental
disabilities ombudsman in the department of community, trade.