
SUBSTITUTE HOUSE BILL 1752

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Cooke, Dyer, Tokuda, McDonald, Sheahan, Cairnes, Cody, Ballasiotes, Bush, Boldt, Wolfe, Mitchell, Doumit, Ogden, Thompson, Blalock, Poulsen, L. Thomas, O'Brien, Costa, Backlund, Veloria, Kenney and Carlson)

Read first time 03/05/97.

1 AN ACT Relating to the long-term care ombudsman program; adding a
2 new chapter to Title 71A RCW; creating a new section; providing an
3 effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The
6 legislature finds that an increasing number of individuals with
7 developmental disabilities are receiving services in community and
8 home-based settings.

9 In creating an office for developmental disabilities ombudsman, the
10 legislature intends to enhance the quality of state services rendered.
11 The legislature further intends that such services are provided in a
12 manner that assures the individual's health and safety and that is
13 respectful of individual dignity and human rights as enumerated in
14 federal and state laws.

15 NEW SECTION. **Sec. 2.** OFFICE OF DEVELOPMENTAL DISABILITIES
16 OMBUDSMAN CREATED. (1) The office of developmental disabilities
17 ombudsman is created. The office shall be charged with protecting the
18 civil and human rights of persons with developmental disabilities as

1 they relate to the provision of services by the state of Washington and
2 by individuals and entities that contract with the state of Washington.
3 All individuals with developmental disabilities as defined under Title
4 71A RCW are eligible for ombudsman services.

5 (2) The department of community, trade, and economic development
6 shall contract with a private agency to serve as the office of
7 developmental disabilities ombudsman. The department shall select a
8 panel to review bids and select the most qualified, private
9 organization from the bids determined to meet the minimum
10 qualifications. The panel shall consist of two people with
11 developmental disabilities, two parents or family members of a person
12 with a developmental disability, and one service provider for
13 individuals with developmental disabilities. Individuals with
14 financial relationships to any of the bidders, state employees, and
15 members of state or federally funded committees, commissions, or
16 councils dealing with disability issues on which any of the bidders'
17 employees or volunteers serve shall not be eligible to serve on the
18 panel. Individuals serving on the panel must be able to act using
19 independent judgment and have no real or apparent conflicts of
20 interests. The panel shall select by September 30, 1997, an
21 independent and qualified private organization that has demonstrated
22 the ability to carry out the responsibilities of the office of
23 developmental disabilities ombudsman and that:

24 (a) Has the capacity to deliver services to individuals in all
25 areas of the state;

26 (b) Has staff with experience in dispute or problem resolution
27 techniques, including investigation, mediation, and negotiation;

28 (c) Has knowledge and experience necessary to train staff and
29 volunteers of the office of developmental disabilities ombudsman.

30 (3) Three years after the selection of a developmental disabilities
31 ombudsman contractor by the process described in subsection (2) of this
32 section, the department, at its option, shall redesignate the
33 contractor as developmental disabilities ombudsman through a sole
34 source contract, or shall solicit competitive bids pursuant to the
35 process described in subsection (2) of this section. The department
36 shall redesignate or use the described competitive process every three
37 years thereafter.

38 (4) State funds appropriated by the legislature for use by the
39 office of developmental disabilities ombudsman shall be awarded to the

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

4 NEW SECTION. **Sec. 3.** DUTIES OF THE DEPARTMENT. The department of
5 community, trade, and economic development shall, consistent with state
6 and federal laws:

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

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

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

17 (4) Ensure that the services provided by long-term care ombudsman,
18 mental health ombudsman, or developmental disabilities are not
19 duplicative, that these offices work collaboratively with one another,
20 and that only one office of ombudsman has responsibility for on-site
21 monitoring of any facility;

22 (5) Provide all program and staff support necessary to carry out
23 the functions provided in subsections (1) through (4) of this section.

24 NEW SECTION. **Sec. 4.** OFFICE OF DEVELOPMENTAL DISABILITIES
25 OMBUDSMAN--SERVICES TO BE PROVIDED. The office of developmental
26 disabilities ombudsman shall maintain a state-wide presence and shall
27 be responsible for protecting the rights and interests of individuals
28 with developmental disabilities as they relate to the provision of
29 services by the state of Washington or by individuals and entities
30 contracting with the state of Washington. The office shall, to the
31 extent that sufficient funds are available:

32 (1) Investigate and resolve, at the lowest possible intervention
33 level, complaints made by or on behalf of persons with developmental
34 disabilities relating to the provision of services by the state of
35 Washington or by individuals and entities that contract with the state
36 of Washington. Such services include, but are not limited to

1 residential, personal care, educational, vocational, social service,
2 rehabilitative, medical, and educational services;

3 (2) Recruit, train, and supervise volunteer ombudsmen to perform
4 the functions of the office of developmental disabilities ombudsman,
5 develop procedures for the certification of volunteer ombudsman, and
6 develop standards that define the permissible scope of duties of
7 volunteer ombudsmen; and

8 (3) Provide training to volunteer ombudsmen regarding the mental
9 health system and the aging and adult service system, in collaboration
10 with the mental health ombudsman and long-term care ombudsman, and
11 assist the mental health ombudsman and long-term care ombudsman in
12 providing training to their staff and volunteers regarding the
13 developmental disabilities service system.

14 NEW SECTION. **Sec. 5.** REPORT TO THE LEGISLATURE. The office of
15 developmental disabilities ombudsman shall provide the legislature with
16 an annual report that includes:

17 (1) An identification of the demographic status of those served by
18 the office;

19 (2) A description of the issues addressed by the office, and a
20 brief description of case scenarios in a form that does not compromise
21 confidentiality;

22 (3) An accounting of the number of residential facilities monitored
23 and of the number of on-site visits made;

24 (4) An identification of specific deficiencies on the part of
25 identified service providers and service systems and recommendations
26 for remedial action;

27 (5) Recommendations for regulatory action by agencies that would
28 improve the quality of service to individuals with developmental
29 disabilities; and

30 (6) Recommendations for legislative action that would result in
31 improved services to individuals with developmental disabilities.

32 NEW SECTION. **Sec. 6.** LIMITATION OF LIABILITY FOR GOOD FAITH
33 PERFORMANCE--PRIVILEGED COMMUNICATIONS. (1) No ombudsman is liable for
34 good faith performance of responsibilities under this chapter.

35 (2) Communications received by developmental disabilities ombudsmen
36 from recipients of developmental disability services in the course of
37 his or her official duties shall be privileged, and no ombudsman shall

1 be required to testify or produce evidence in any civil or criminal
2 proceeding except by court order.

3 NEW SECTION. **Sec. 7.** COOPERATION BY AGENCIES WITH OMBUDSMAN--
4 PENALTIES FOR INTERFERENCE--RETALIATORY ACTION PROHIBITED. (1) A state
5 provider of services to individuals with developmental disabilities, or
6 a provider who contracts with the state to provide such services, shall
7 not willfully interfere with a representative of the office of
8 developmental disabilities ombudsman in the performance of his or her
9 official duties.

10 (2) No state provider or contracted provider of service shall
11 attempt to intimidate, threaten, coerce, or command any employee,
12 service recipient, family member of a service recipient, or any
13 volunteer for the purpose of preventing communication with the
14 developmental disabilities ombudsman concerning information of
15 assistance to the ombudsman in the performance of his or her duties.
16 Nothing in this section authorizes an individual to disclose
17 information prohibited by law.

18 (3) No discriminatory, disciplinary, or retaliatory action may be
19 taken against any employee of a facility or agency, any service
20 recipient, family member of a recipient, or any volunteer for any
21 communication made or information disclosed for the purpose of aiding
22 an ombudsman in the performance of his or her official duties, unless
23 the same was done maliciously or without good faith. This subsection
24 is not intended to infringe on the rights of an employer to supervise,
25 discipline, or terminate an employee for other reasons.

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

29 NEW SECTION. **Sec. 8.** POSTING OF NOTICE BY RESIDENTIAL
30 FACILITIES--DISTRIBUTION OF INFORMATION TO RESIDENTS AND SERVICE
31 RECIPIENTS. (1) Every residential care facility providing services to
32 individuals with developmental disabilities shall post in a conspicuous
33 location a notice of developmental disability ombudsman's toll-free
34 number and the name, address, and phone number of the office of
35 developmental disabilities ombudsman. The form of the notice shall be
36 developed by the office of developmental disabilities ombudsman.

1 (2) The information provided for in subsection (1) of this section
2 shall be distributed individually to residents, family members, and
3 legal guardians upon the admission of a person with a developmental
4 disability to a residential care facility and upon such an individual's
5 application for any community service or support by any state-funded
6 provider engaged in the provision of services to persons with
7 developmental disabilities.

8 (3) The department of social and health services division of
9 developmental disabilities shall, at least once every twelve months,
10 provide in written form easily accessible to persons with developmental
11 disabilities the information provided in subsection (1) of this section
12 to every client for which it presently provides services.

13 NEW SECTION. **Sec. 9.** DEVELOPMENT OF RULES PROVIDING FOR RIGHT OF
14 ENTRY TO FACILITIES--ACCESS TO RESIDENTS AND RECORDS. (1) The
15 department of community, trade, and economic development shall adopt
16 such rules as are necessary to establish a right of entry on behalf of
17 developmental disabilities ombudsmen to the residential care facilities
18 identified in section 4(3) of this chapter and for reasonable access to
19 residents with developmental disabilities at any time deemed necessary
20 and reasonable by the office of developmental disabilities ombudsman to
21 effectively carry out the provisions of this chapter. Such rules shall
22 make adequate provision for privacy for the purpose of hearing,
23 investigating, resolving complaints, and rendering advice to residents.

24 (2) The department shall in addition adopt rules to ensure
25 reasonable access by ombudsmen to the records of clients of the
26 division of developmental disabilities and to ensure that such access
27 will require the consent of the client or his or her guardian or legal
28 representative.

29 NEW SECTION. **Sec. 10.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the
35 state government and its existing public institutions, and takes effect
36 July 1, 1997.

1 NEW SECTION. **Sec. 12.** If specific funding for the purposes of
2 this act, referencing this act by bill or chapter number, is not
3 provided by June 30, 1998, in the omnibus appropriations act, this act
4 is null and void.

5 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act constitute
6 a new chapter in Title 71A RCW.

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