
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1752

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (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, Voloria, Kenney and Carlson)

Read first time 03/10/97.

1 AN ACT Relating to the long-term care ombudsman program; amending
2 RCW 43.190.010, 43.190.020, 43.190.030, 43.190.040, and 43.190.090;
3 creating new sections; providing an effective date; and declaring an
4 emergency.

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

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

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

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

1 As used in this chapter, "long-term care facility" means any of the
2 following:

3 (1) A facility which:

4 (a) Maintains and operates twenty-four hour skilled nursing
5 services for the care and treatment of chronically ill or convalescent
6 patients, including mental, emotional, or behavioral problems, (~~mental~~
7 ~~retardation~~) developmental disability, or alcoholism;

8 (b) Provides supportive, restorative, and preventive health
9 services in conjunction with a socially oriented program to its
10 residents, and which maintains and operates twenty-four hour services
11 including board, room, personal care, and intermittent nursing care.
12 "Long-term health care facility" includes nursing homes and nursing
13 facilities, but does not include acute care hospital or other licensed
14 facilities except for that distinct part of the hospital or facility
15 which provides nursing facility services.

16 (2) Any family home, group care facility, or similar facility
17 determined by the (~~secretary~~) director of community, trade, and
18 economic development, for twenty-four hour nonmedical care of persons
19 in need of personal services, supervision, or assistance essential for
20 sustaining the activities of daily living or for the protection of the
21 individual.

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

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

25 There is created the office of the state long-term care ombudsman
26 and the office of the developmental disabilities ombudsman. The
27 department of community, trade, and economic development shall contract
28 (1) with a private nonprofit organization to provide long-term care
29 ombudsman services as specified under, and consistent with, the federal
30 older Americans act as amended, federal mandates, and (2) with a
31 private nonprofit organization to provide developmental disabilities
32 ombudsman services, consistent with the goals of the developmental
33 disabilities provisions in Title 71A RCW, the goals of the state, and
34 the needs of its citizens. The department of community, trade, and
35 economic development shall ensure that all program and staff support
36 necessary to enable the (~~ombudsman~~) ombudsmen to effectively protect
37 the interests of residents, patients, and clients of all long-term care
38 facilities is provided by the nonprofit organization that contracts to

1 provide (~~long-term care~~) ombudsman services. The (~~long-term care~~)
2 ombudsman programs shall have the following powers and duties:

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

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

7 (3) Establish procedures consistent with RCW 43.190.110 for
8 appropriate access by (~~long-term care~~) ombudsmen to long-term care
9 facilities and patients' records, including procedures to protect the
10 confidentiality of the records and ensure that the identity of any
11 complainant or resident will not be disclosed without the written
12 consent of the complainant or resident, or upon court order;

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

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

24 (a) Such complainant or resident, or the complainant's or
25 resident's legal representative, consents in writing to such
26 disclosure; or

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

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

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

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

35 (b) Developmental disabilities;

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

37 ~~(e)~~ (d) Dispute or problem resolution techniques, including
38 investigation, mediation, and negotiation.

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

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

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

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

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

24 (3) All communications by a long-term care ombudsman or
25 developmental disabilities ombudsman, if reasonably related to the
26 requirements of that individual's responsibilities under this chapter
27 and done in good faith, are privileged and that privilege shall serve
28 as a defense to any action in libel or slander.

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

33 (5) For the purposes of this chapter, the meaning of "retaliatory
34 action" shall be consistent with the definition of "reprisal and
35 retaliatory action" in RCW 42.40.050.

36 NEW SECTION. **Sec. 6. SEPARATE OFFICE OF DEVELOPMENTAL**
37 **DISABILITIES OMBUDSMAN CREATED WITHIN THE LONG-TERM CARE OMBUDSMAN**

1 **PROGRAM.** (1) The office of developmental disabilities ombudsman is
2 created within the long-term care ombudsman program. The office shall
3 be charged with protecting the rights and interests of persons with
4 developmental disabilities.

5 (2) State funds appropriated by the legislature in the biennial
6 operating budget for use by the office of developmental disabilities
7 ombudsman shall be awarded to the office of developmental disabilities
8 ombudsman and shall not be diverted to any other provider, person, or
9 agency by any state agency or entity, except by action of the
10 legislature.

11 NEW SECTION. **Sec. 7. DUTIES OF THE DEPARTMENT RELATED TO THE**
12 **SEPARATE DEVELOPMENTAL DISABILITIES OMBUDSMAN PROGRAM.** The department
13 of community, trade, and economic development shall, consistent with
14 state and federal laws:

15 (1) Monitor the expenditure of state funds under the contract for
16 appropriate utilization of funds and the fulfillment of state and
17 federal laws;

18 (2) Facilitate the exchange of information among appropriate state
19 agencies and organizations regarding issues relating to the office of
20 developmental disabilities ombudsman;

21 (3) Ensure that the office of developmental disabilities ombudsman
22 has direct access to the directors of state governmental entities with
23 responsibilities that impact on persons with developmental
24 disaffiliates;

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

27 NEW SECTION. **Sec. 8. OFFICE OF DEVELOPMENTAL DISABILITIES**
28 **OMBUDSMAN--SERVICES TO BE PROVIDED.** The office of developmental
29 disabilities ombudsman shall maintain a state-wide presence and shall
30 be responsible for protecting the rights and interest of individuals
31 with developmental disabilities as they relate to the provision of
32 services by the state of Washington or by individuals and entities
33 contracting with the state of Washington. The office shall, to the
34 extent that sufficient funds are available:

35 (1) Investigate, provide advocacy, and assist in the resolution of
36 complaints at the lowest possible intervention level. The
37 developmental disabilities ombudsman shall follow the expressed wishes

1 of the individual with developmental disabilities in providing all
2 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 ombudsmen, and
6 develop standards that define the permissible scope of duties of
7 volunteer ombudsmen.

8 NEW SECTION. **Sec. 9. REPORT TO THE LEGISLATURE.** The office of
9 developmental disabilities ombudsman shall provide the legislature with
10 an annual report that includes:

11 (1) Demographics describing access to the ombudsman program by
12 people with developmental disabilities and their families;

13 (2) A description of the issues identified as frequent in the
14 complaint data;

15 (3) An identification of deficiencies on the part of service
16 providers and systems and recommendations for remedial action;

17 (4) Recommendations for regulatory action by agencies that would
18 improve the quality of life for individuals with developmental
19 disabilities;

20 (5) Recommendations for legislative action that would improve the
21 quality of life for individuals with developmental disabilities.

22 NEW SECTION. **Sec. 10. DEVELOPMENT OF RULES PROVIDING FOR RIGHT OF**
23 **ENTRY TO FACILITIES BY DEVELOPMENTAL DISABILITIES OMBUDSMEN--ACCESS TO**
24 **RESIDENTS AND RECORDS.** (1) The department of community, trade, and
25 economic development shall adopt such rules as are necessary to
26 establish a right of entry on behalf of developmental disabilities
27 ombudsmen to the residential care facilities identified in this chapter
28 and for reasonable access to residents with developmental disabilities
29 at any time deemed necessary and reasonable by the office of
30 developmental disabilities state ombudsman to effectively carry out the
31 provisions of this chapter. Such rules shall make adequate provision
32 for privacy for the purpose of hearing, investigating, resolving
33 complaints, and rendering advice to residents.

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

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

3 NEW SECTION. **Sec. 11.** If any provision of this act or its
4 application to any person or circumstance 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 immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 1997.

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

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