
HOUSE BILL 1338

State of Washington

57th Legislature

2001 Regular Session

By Representatives Tokuda, O'Brien, Boldt, Simpson, Wood, Edmonds, Kenney, Kagi, Schual-Berke and Santos; by request of Department of Community, Trade, and Economic Development

Read first time 01/24/2001. Referred to Committee on Children & Family Services.

1 AN ACT Relating to creating a developmental disabilities ombudsman;
2 amending RCW 43.190.060 and 43.06A.030; adding a new chapter to Title
3 43 RCW; providing an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that an
6 increasing number of individuals with developmental disabilities
7 receive services in home and community-based settings. The legislature
8 intends to promote the quality of services and increase consumer
9 protections for individuals with developmental disabilities by creating
10 ombudsman services for individuals with developmental disabilities.

11 The legislature finds that individuals with developmental
12 disabilities have the right to choose the appropriate services and
13 supports they need within the appropriated funds available. The
14 services and supports must be appropriate to the needs of the
15 individual with developmental disabilities, designed to maximize the
16 developmental potential of the individual, and be provided in the
17 setting that is least restrictive to the individual's personal liberty.
18 The services and supports must be provided in a manner that promotes

1 the individual's health and safety and is respectful of individual
2 self-dignity and human rights as enumerated in federal and state laws.

3 Therefore the legislature intends to create an independent
4 developmental disabilities ombudsman to promote quality services, the
5 protection of rights, and provide the necessary assistance to
6 individuals with developmental disabilities consistent with this
7 chapter.

8 NEW SECTION. **Sec. 2.** (1) The developmental disabilities ombudsman
9 is created.

10 (2) All individuals with developmental disabilities who are
11 eligible persons as defined in RCW 71A.10.020 are eligible for
12 developmental disabilities ombudsman services, except for those
13 individuals who reside in facilities licensed under chapter 70.128,
14 18.51, 18.20, or 74.15 RCW and therefore are eligible for ombudsman
15 services under chapter 43.190 or 43.06A RCW.

16 (3) Within available funding, priority consideration shall be given
17 to medicaid-funded individuals receiving community-based services.

18 NEW SECTION. **Sec. 3.** (1) The department of community, trade, and
19 economic development shall contract with a private, nonprofit
20 organization to provide ombudsman services to individuals with
21 developmental disabilities.

22 (2) The organization selected to provide ombudsman services for
23 individuals with developmental disabilities must be an independent,
24 competent advocacy organization and must:

25 (a) Not be a provider of paid services to individuals with
26 developmental disabilities, except advocacy services;

27 (b) Have the capacity to deliver services to individuals in all
28 areas of the state;

29 (c) Have staff with experience and knowledge in dispute or problem
30 resolution techniques, including investigation, mediation, and
31 negotiation, have a wide range of experience and expertise with social
32 and legal systems, and have knowledge of developmental disabilities;

33 (d) Have experience in managing a large budget, particularly a
34 budget with reporting requirements;

35 (e) Have private nonprofit status and eligibility for tax exempt
36 status under section 501(c)(3) of the internal revenue code; and

1 (f) Have the knowledge and commitment necessary to competently
2 serve diverse ethnic and cultural communities.

3 NEW SECTION. **Sec. 4.** The developmental disabilities ombudsman has
4 the following duties:

5 (1) To investigate, upon receipt of a complaint or when the
6 ombudsman has reasonable cause for concern, an act or omission alleged
7 to be contrary to law, rule, contract, or applicable policy that may
8 adversely affect the health, safety, welfare, and rights of those
9 eligible for services under this chapter;

10 (2) To protect the interests of and advocate for individuals with
11 developmental disabilities consistent with the duties of this chapter;

12 (3) To provide information to those eligible for services under
13 this chapter on the rights and responsibilities they have and provide
14 information, as appropriate, to public agencies regarding the problems
15 individuals with developmental disabilities are having in receiving
16 services;

17 (4) To enter into coordination agreements to avoid duplication of
18 services with the state long-term care ombudsman, the office of family
19 and children's ombudsman, the Washington protection and advocacy
20 system, the department of social and health services, and other
21 ombudsman functions in the state where there is overlapping authority;

22 (5) To develop procedures for referral of complaints to appropriate
23 state or local government agencies, seek to resolve complaints at the
24 lowest, most appropriate level possible, and follow up on cases
25 referred;

26 (6) To report abandonment, abuse, neglect, or financial
27 exploitation of vulnerable adults in accordance with RCW 74.34.035 and
28 report abuse and neglect of children in accordance with RCW 26.44.030;

29 (7) To establish procedures consistent with this chapter, chapters
30 26.44, 42.17, and 74.34 RCW, and other applicable federal and state
31 laws, for access to the records of the department of social and health
32 services, including procedures to protect the confidentiality of the
33 records and ensure that the identity of any individual with
34 developmental disabilities will not be disclosed without the written
35 consent of the individual, or the individual's legal representative, or
36 upon court order;

1 (8) To establish a statewide uniform reporting system to collect
2 and analyze data relating to complaints, for the purpose of identifying
3 and resolving significant problems;

4 (9) As necessary, to contract with local advocacy agencies to
5 fulfill the duties of the developmental disabilities ombudsman services
6 and, as necessary, recruit volunteers to perform the functions of the
7 developmental disabilities ombudsman;

8 (10) To provide training for staff and volunteers to ensure they:

9 (a) Are qualified, through experience or training in working with
10 people with developmental disabilities;

11 (b) Are able to identify and resolve problems;

12 (c) Are able to assist people with developmental disabilities in
13 assertion of their civil and human rights;

14 (d) Know and use complaint procedures for mandatory reporting; and

15 (e) Are knowledgeable of the laws, rules, and policies that govern
16 services provided under medicaid and the developmental disabilities
17 system and other applicable statute or rule governing service settings;

18 (11) To develop ethical standards for the conduct of ombudsman
19 services;

20 (12) To establish a toll-free number; and

21 (13) To engage in outreach activities to make services of the
22 developmental disabilities ombudsman known by at least:

23 (a) Providing, through the department of social and health
24 services, information describing the developmental disabilities
25 ombudsman services to persons as they are being determined eligible
26 under RCW 71A.16.040 and annually thereafter to eligible persons; and

27 (b) Providing information about ombudsman services and how
28 individuals can contact the ombudsman to programs and individuals
29 contracting with the department of social and health services to
30 provide services under Title 71A RCW.

31 NEW SECTION. **Sec. 5.** The department of community, trade, and
32 economic development, in consultation with the developmental
33 disabilities council, shall provide the support necessary to contract
34 out the developmental disabilities ombudsman services and adopt rules
35 necessary to implement this chapter.

1 NEW SECTION. **Sec. 6.** The developmental disabilities ombudsman
2 shall prepare an annual report to the legislature that identifies at
3 least but not limited to the following:

4 (1) The demographic status of those served by the office;

5 (2) A description of the issues addressed by the office;

6 (3) A description of case scenarios without compromising
7 confidentiality;

8 (4) The number of visits made, number of complaints received, and
9 the types of investigations conducted;

10 (5) Recommendations of actions by agencies that would improve the
11 quality of services to individuals with developmental disabilities and
12 how the agency responded to the recommendations; and

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

15 NEW SECTION. **Sec. 7.** The developmental disabilities ombudsman
16 shall treat all matters under investigation, including the identities
17 of service recipients, complainants, and individuals from whom
18 information is acquired, as confidential, except as far as disclosures
19 may be necessary to enable the developmental disabilities ombudsman to
20 perform its duties, comply with abuse reporting requirements, and to
21 support any recommendations resulting from an investigation. Upon
22 receipt of information that by law is confidential or privileged, the
23 developmental disabilities ombudsman shall maintain confidentiality of
24 such information and shall not further disclose or disseminate the
25 information except as provided by applicable state or federal law.
26 Investigative records of the developmental disabilities ombudsman are
27 confidential and are exempt from public disclosure under chapter 42.17
28 RCW.

29 NEW SECTION. **Sec. 8.** (1) The developmental disabilities ombudsman
30 may not be compelled, in any judicial or administrative proceeding, to
31 testify or to produce evidence regarding:

32 (a) The exercise of the official duties of the developmental
33 disabilities ombudsman;

34 (b) Identifying information about complainants or witnesses;

35 (c) Memoranda, work products, notes, and case files relating to the
36 official duties of the developmental disabilities ombudsman.

1 (2) For the purposes of this section, "identifying information"
2 includes the complainant's or witness's name, location, telephone
3 number, likeness, social security number, or other identification
4 number or identification of immediate family members and employees of
5 the department of social and health services and its contractors.

6 NEW SECTION. **Sec. 9.** The privilege in sections 7 and 8 of this act
7 does not apply when:

8 (1) The complainant or witness waives confidentiality;

9 (2) The developmental disabilities ombudsman, staff, or volunteer
10 has direct knowledge of an alleged crime or becomes aware of a risk of
11 harm to any person and the testimony, evidence, or discovery sought in
12 a judicial or adjudicative proceeding is relevant to the action;

13 (3) The developmental disabilities ombudsman, staff, or volunteers
14 have reported as required under chapter 74.34 or 26.44 RCW.

15 NEW SECTION. **Sec. 10.** (1) An employee or volunteer of the
16 developmental disabilities ombudsman is not liable for good faith
17 performance of responsibilities under this chapter.

18 (2) No discriminatory, disciplinary, or retaliatory action may be
19 taken against an employee of the department of social and health
20 services, an employee of a contracting agency, or a recipient of
21 services for any communication made, or information given or disclosed,
22 to aid the developmental disabilities ombudsman in carrying out its
23 responsibilities, unless the communication or information is made,
24 given, or disclosed maliciously or without good faith. This subsection
25 is not intended to infringe on the rights of the employer to supervise,
26 discipline, or terminate an employee for other reasons.

27 (3) All communications by an ombudsman, if reasonably related to
28 the requirements of that individual's responsibilities under this
29 chapter and done in good faith, are privileged under RCW 9.58.070 and
30 that privilege is a defense in any action in libel or slander.

31 NEW SECTION. **Sec. 11.** (1) The department of social and health
32 services shall:

33 (a) Allow the developmental disabilities ombudsman to communicate
34 privately with any client eligible for services under this chapter for
35 the purposes of carrying out the duties of this chapter;

1 (b) Permit the developmental disabilities ombudsman physical access
2 to all facilities and programs serving clients eligible for services
3 under this chapter for the purpose of carrying out the duties of this
4 chapter; and

5 (c) Provide, upon the request of the developmental disabilities
6 ombudsman, and in accordance with applicable laws and rules, immediate
7 access to all relevant information, records, case files, reports, or
8 documents in possession or control of the department of social and
9 health services or its contractors that the developmental disabilities
10 ombudsman considers necessary in an investigation.

11 (2) The same access applies to all records of related services
12 received by an eligible client that the developmental disabilities
13 ombudsman considers necessary in an investigation.

14 **Sec. 12.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to
15 read as follows:

16 A long-term care ombudsman shall:

17 (1) Identify, investigate, and resolve complaints made by or on
18 behalf of residents of long-term care facilities relating to
19 administrative action, inaction, or decisions which may adversely
20 affect the health, safety, welfare, and rights of these individuals;

21 (2) Coordinate with the developmental disabilities ombudsman when
22 investigating complaints involving individuals with developmental
23 disabilities, and where advocacy by other ombudsman programs are
24 necessary to resolve a problem;

25 (3) Monitor the development and implementation of federal, state,
26 and local laws, rules, regulations, and policies with respect to long-
27 term care facilities in this state;

28 ~~((+3))~~ (4) Provide information as appropriate to residents,
29 resident representatives, and others regarding the rights of residents,
30 and to public agencies regarding the problems of individuals residing
31 in long-term care facilities; and

32 ~~((+4))~~ (5) Provide for training volunteers and promoting the
33 development of citizen organizations to participate in the ombudsman
34 program. A trained volunteer long-term care ombudsman, in accordance
35 with the policies and procedures established by the state long-term
36 care ombudsman program, shall inform residents, their representatives,
37 and others about the rights of residents, and may identify,
38 investigate, and resolve complaints made by or on behalf of residents

1 of long-term care facilities relating to action, inaction, or
2 decisions, that may adversely affect the health, safety, welfare, and
3 rights of these individuals.

4 Nothing in chapter 133, Laws of 1999 shall be construed to empower
5 the state long-term care ombudsman or any local long-term care
6 ombudsman with statutory or regulatory licensing or sanctioning
7 authority.

8 **Sec. 13.** RCW 43.06A.030 and 1996 c 131 s 4 are each amended to
9 read as follows:

10 The ombudsman shall perform the following duties:

11 (1) Provide information as appropriate on the rights and
12 responsibilities of individuals receiving family and children's
13 services, and on the procedures for providing these services;

14 (2) Coordinate as appropriate with the developmental disabilities
15 ombudsman when investigating complaints involving children with
16 developmental disabilities residing in facilities, and collaborate when
17 action by both ombudsman programs is necessary to investigate or
18 resolve a complaint or systemic issue;

19 (3) Investigate, upon his or her own initiative or upon receipt of
20 a complaint, an administrative act alleged to be contrary to law, rule,
21 or policy, imposed without an adequate statement of reason, or based on
22 irrelevant, immaterial, or erroneous grounds; however, the ombudsman
23 may decline to investigate any complaint as provided by rules adopted
24 under this chapter;

25 ~~((+3))~~ (4) Monitor the procedures as established, implemented, and
26 practiced by the department to carry out its responsibilities in
27 delivering family and children's services with a view toward
28 appropriate preservation of families and ensuring children's health and
29 safety;

30 ~~((+4))~~ (5) Review periodically the facilities and procedures of
31 state institutions serving children, and state-licensed facilities or
32 residences;

33 ~~((+5))~~ (6) Recommend changes in the procedures for addressing the
34 needs of families and children;

35 ~~((+6))~~ (7) Submit annually to the committee and to the governor by
36 November 1st a report analyzing the work of the office including
37 recommendations;

1 (~~(7)~~) (8) Grant the committee access to all relevant records in
2 the possession of the ombudsman unless prohibited by law; and
3 (~~(8)~~) (9) Adopt rules necessary to implement this chapter.

4 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act
5 constitute a new chapter in Title 43 RCW.

6 NEW SECTION. **Sec. 15.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 July 1, 2001.

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