
HOUSE BILL 1202

State of Washington

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By Representatives Roberts, Walsh, O'Brien, Dickerson, Haler, Pettigrew, Darneille, Green, Appleton, McDermott, Kagi, Miloscia, McCoy, Hudgins, P. Sullivan, Conway, Wood, Santos, Schual-Berke, Simpson, Lantz, Hasegawa, Kenney and Haigh

Read first time 01/12/2007. Referred to Committee on Human Services.

1 AN ACT Relating to the office of the ombudsman for persons with
2 developmental disabilities; and adding a new chapter to Title 43 RCW.

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

4 NEW SECTION. **Sec. 1.** An office of the ombudsman for persons with
5 developmental disabilities is created within the office of the governor
6 for the purpose of promoting public awareness and understanding of
7 developmental disabilities, identifying system issues and responses for
8 the governor and the legislature to act upon, monitoring and ensuring
9 compliance with administrative acts, relevant statutes, rules, and
10 policies pertaining to services for persons with developmental
11 disabilities, and to ensure that services and supports are of good
12 quality and improve a person's quality of life.

13 The ombudsman shall be an independent function within state
14 government and shall exercise his or her powers and duties without
15 interference from either public or private agencies or organizations.

16 NEW SECTION. **Sec. 2.** (1) The governor shall appoint a
17 developmental disabilities ombudsman from a list of six to ten
18 candidates certified by the developmental disabilities council as

1 qualified for the position. Each certified candidate shall be a person
2 of recognized judgment, independence, objectivity, and integrity, and
3 shall be qualified by training or experience, or both, in developmental
4 disability services law, policy, and advocacy within the community
5 system of developmental disabilities services. Prior to certifying
6 qualified candidates, the developmental disabilities council shall
7 consult with, and may receive recommendations from the appropriate
8 committees of the legislature and developmental disabilities
9 stakeholders, regarding candidates for consideration as the ombudsman.

10 (2) The person appointed developmental disabilities ombudsman shall
11 hold office for a term of five years and shall continue to hold office
12 until reappointed or until his or her successor is appointed. The
13 governor may remove the ombudsman only for neglect of duty, misconduct,
14 or inability to perform duties. Any vacancy shall be filled by similar
15 appointment for the remainder of the unexpired term. The governor
16 shall solicit recommendations from the developmental disabilities
17 council and the developmental disabilities ombudsman advisory
18 committee, established in section 11 of this act, as to whether or not
19 to reappoint the ombudsman to another five-year term. If the governor
20 decides not to reappoint the developmental disabilities ombudsman the
21 process set forth in subsection (1) of this section will be used to
22 appoint a new ombudsman.

23 NEW SECTION. **Sec. 3.** The developmental disabilities ombudsman
24 shall perform the following duties:

25 (1) Provide information as appropriate on the rights and
26 responsibilities of individuals with developmental disabilities
27 receiving services, and on the procedures for providing these services;

28 (2) Impartially investigate, upon his or her own initiative, or
29 upon receipt of a complaint, an administrative act alleged to be
30 contrary to law, rule, or policy, imposed without an adequate statement
31 of reason, develop findings in each case and, to the extent the
32 findings favor the complainant with a developmental disability, follow
33 through on behalf of the complainant to the resolution of the
34 complaint, or based on irrelevant, immaterial, or erroneous grounds;
35 however, the ombudsman may decline to investigate any complaint as
36 provided by rules adopted under this chapter;

1 (3) Monitor the procedures as established, implemented, and
2 practiced by the department of social and health services or other
3 public or private agency to carry out their responsibilities in
4 delivering services and supports to persons with developmental
5 disabilities;

6 (4) Review periodically the procedures for providing services and
7 supports to individuals with developmental disabilities and their
8 families, including programs or individuals under contract to provide
9 services, state licensed facilities, and state institutions serving
10 persons with developmental disabilities;

11 (5) Submit annually to the appropriate committees of the
12 legislature and to the governor, by November 1st, a report analyzing
13 the work of the office including recommendations;

14 (6) Grant the appropriate committees of the legislature access to
15 all relevant records in the possession of the ombudsman unless
16 prohibited by law; and

17 (7) Adopt rules necessary to implement this chapter.

18 NEW SECTION. **Sec. 4.** The developmental disabilities ombudsman
19 shall treat all matters under investigation, including the identities
20 of service recipients, complainants, and individuals from whom
21 information is acquired, as confidential, except as far as disclosures
22 may be necessary to enable the ombudsman to perform the duties of the
23 office and to support any recommendations resulting from an
24 investigation. Upon receipt of information that by law is confidential
25 or privileged, the developmental disabilities ombudsman shall maintain
26 the confidentiality of the information and shall not further disclose
27 or disseminate the information, except as provided by applicable state
28 or federal law. Investigative records of the office of the
29 developmental disabilities ombudsman are confidential and are exempt
30 from public disclosure under chapter 42.56 RCW.

31 NEW SECTION. **Sec. 5.** Neither the developmental disabilities
32 ombudsman nor the ombudsman's staff may be compelled, in any judicial
33 or administrative proceeding, to testify or to produce evidence
34 regarding the exercise of the official duties of the ombudsman or of
35 the ombudsman's staff. All related memoranda, work product, notes, and
36 case files of the developmental disabilities ombudsman's office are

1 confidential, are not subject to discovery, judicial or administrative
2 subpoena, or other method of legal compulsion, and are not admissible
3 in evidence in a judicial or administrative proceeding.

4 NEW SECTION. **Sec. 6.** (1) Identifying information about
5 complainants or witnesses shall not be subject to any method of legal
6 compulsion, nor shall such information be revealed to the governor
7 except under the following circumstances:

- 8 (a) The complainant or witness waives confidentiality;
- 9 (b) Under a legislative subpoena when there is a legislative
10 investigation for neglect of duty or misconduct by the developmental
11 disabilities ombudsman or ombudsman's office when the identifying
12 information is necessary to the investigation of the ombudsman's acts;
- 13 (c) Under an investigation or inquiry by the governor as to neglect
14 of duty or misconduct by the developmental disabilities ombudsman or
15 ombudsman's office when the identifying information is necessary to the
16 investigation of the ombudsman's acts.

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

21 NEW SECTION. **Sec. 7.** The privilege described in section 5 of this
22 act does not apply when:

- 23 (1) The developmental disabilities ombudsman or ombudsman's staff
24 member has direct knowledge of an alleged crime, and the testimony,
25 evidence, or discovery sought is relevant to that allegation;
- 26 (2) The developmental disabilities ombudsman or a member of the
27 ombudsman's staff has received a threat of, or becomes aware of a risk
28 of, imminent serious harm to any person, and the testimony, evidence,
29 or discovery sought is relevant to that threat or risk; or
- 30 (3) The developmental disabilities ombudsman has been asked to
31 provide general information regarding the general operation of, or the
32 general processes employed at, the ombudsman's office.

33 NEW SECTION. **Sec. 8.** (1) An employee of the office of the
34 ombudsman for persons with developmental disabilities is not liable for
35 good faith performance of responsibilities under this chapter.

1 (2) No discriminatory, disciplinary, or retaliatory action may be
2 taken against an employee of the department of social and health
3 services, an employee of a contracting agency of the department of
4 social and health services, or a family member or recipient of
5 developmental disabilities services for any communication made, or
6 information given or disclosed, to aid the office of the ombudsman for
7 persons with developmental disabilities in carrying out its
8 responsibilities, unless the communication or information is made,
9 given, or disclosed maliciously or without good faith. This subsection
10 is not intended to infringe on the rights of the employer to supervise,
11 discipline, or terminate an employee for other reasons.

12 (3) All communications by an ombudsman, if reasonably related to
13 the requirements of that individual's responsibilities under this
14 chapter and done in good faith, are privileged under RCW 9.58.070 and
15 that privilege shall serve as a defense in any action in libel or
16 slander.

17 NEW SECTION. **Sec. 9.** When the ombudsman or ombudsman's staff
18 member has reasonable cause to believe that any public official,
19 employee, or other person has acted in a manner warranting criminal or
20 disciplinary proceedings, the ombudsman or ombudsman's staff member
21 shall report the matter, or cause a report to be made, to the
22 appropriate authorities.

23 NEW SECTION. **Sec. 10.** The department of social and health
24 services shall:

25 (1) Allow the ombudsman or the ombudsman's designee to communicate
26 privately with any person with developmental disabilities who is
27 receiving services through the department for the purposes of carrying
28 out its duties under this chapter;

29 (2) Permit the ombudsman or the ombudsman's designee physical
30 access to state institutions serving persons with developmental
31 disabilities, and state-licensed facilities or residences for the
32 purposes of carrying out its duties under this chapter; and

33 (3) Upon the ombudsman's request, grant the ombudsman or the
34 ombudsman's designee the right to access, inspect, and copy all
35 relevant information, records, or documents in the possession or

1 control of the department that the ombudsman considers necessary in an
2 investigation.

3 NEW SECTION. **Sec. 11.** A developmental disabilities ombudsman
4 consumer advisory committee of nine people shall be established, a
5 majority of the composition being individuals with developmental
6 disabilities or family members of individuals with developmental
7 disabilities. Five of the members shall be appointed by the governor;
8 at least one of the governor's appointees shall be an immediate family
9 member of a person with a developmental disability living in an
10 institution and at least one of the governor's appointees shall be an
11 immediate family member of a person with a developmental disability in
12 a noninstitutional setting. Two of the members shall be appointed by
13 the developmental disabilities council and two of the members shall be
14 appointed by the Washington protection and advocacy system. At least
15 one each of the appointees of the governor, developmental disabilities
16 council, and Washington protection and advocacy system shall be
17 individuals with developmental disabilities. The developmental
18 disabilities ombudsman shall submit a written progress report in
19 formats accessible to advisory committee members at least two weeks
20 prior to each of four quarterly meetings. The advisory committee will
21 produce an annual written evaluation of the developmental disabilities
22 ombudsman program which shall be approved by a majority of the advisory
23 committee and submitted to the governor no later than August 31st of
24 each year. Three months prior to the end of the developmental
25 disabilities ombudsman term, the advisory council will submit a
26 recommendation to the governor and developmental disabilities council
27 as to whether or not they believe the developmental disabilities
28 ombudsman should be reappointed with a explanation as to why they
29 reached this conclusion. Advisory committee members shall serve for
30 three-year terms with a limit of two consecutive terms. Initial
31 members shall be appointed to term lengths necessary to assure the
32 terms of three members expire each year. Members appointed to a
33 vacancy that came about prior to the expiration of a three-year term
34 shall be appointed to complete that term. Members who serve less than
35 one-half of their predecessor's term may be appointed to two more
36 terms. Advisory council meetings shall be open and allow time for
37 public comment.

1 NEW SECTION. **Sec. 12.** The developmental disabilities ombudsman
2 shall collaborate with the long-term care ombudsman, the family and
3 children ombudsman, the Washington protection and advocacy system, and
4 the special education ombudsman to clarify authority in those
5 situations where their mandates overlap.

6 The developmental disabilities ombudsman may recommend changes in
7 the procedures for addressing the needs of persons with developmental
8 disabilities and share them with the developmental disabilities council
9 and the Washington protection and advocacy system.

10 NEW SECTION. **Sec. 13.** The developmental disabilities ombudsman
11 shall give priority for its services to clients of the department of
12 social and health services division of developmental disabilities who
13 are receiving, are eligible for, or have applied for services.

14 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
15 constitute a new chapter in Title 43 RCW.

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