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**HOUSE BILL 2858**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives S. Hunt, Hudgins, Appleton, Kilduff, Stanford, Pollet, and Santos

AN ACT Relating to creating an office of the developmental disabilities ombuds; adding a new chapter to Title 71A RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the developmental disabilities council.

(2) "Department" means the department of social and health services.

(3) "Office" means the office of the developmental disabilities ombuds.

(4) "Ombuds" means the developmental disabilities ombuds.

NEW SECTION. **Sec.**  CREATION OF OFFICE. (1) There is hereby created an office of the developmental disabilities ombuds within the department of commerce for the purpose of informing individuals with disabilities of their rights and responsibilities; disseminating information; impartially investigating and resolving complaints; identifying system issues; monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to services for persons with developmental disabilities; and ensuring that services and supports are of good quality and improve a person's quality of life. The ombuds is an independent position within state government and shall exercise his or her powers and duties without interference from either public or private agencies or organizations.

(2)(a) The department of commerce shall contract with a private nonprofit organization to provide ombuds services for individuals with developmental disabilities who are receiving services, are eligible for services, or have applied for services. The department of commerce shall ensure that all program and staff support necessary to enable the ombuds to effectively protect the interests of individuals with developmental disabilities is provided by the nonprofit organization that contracts to provide developmental disabilities ombuds services. The department of commerce shall adopt rules to carry out this chapter. The office has the following powers and duties:

(i) To provide services for coordinating the activities of the ombuds throughout the state; and

(ii) Carry out such other activities as the department of commerce deems appropriate to meet the requirements in this chapter.

(b) The nonprofit organization the department of commerce contracts with for the purpose of providing developmental disabilities ombuds services must:

(i) Not be a provider of supports or services to persons with developmental disabilities;

(ii) Agree to assume fiduciary responsibility for the office; and

(iii) Agree not to interfere with the independence of the ombuds in his or her performance of the duties set forth in section 3 of this act.

NEW SECTION. **Sec.**  DUTIES OF OMBUDS. The ombuds shall perform the following duties:

(1) Provide information as appropriate on the rights and responsibilities of individuals with developmental disabilities who are receiving services, are eligible for services, or have applied for services, and on the procedures for providing these services;

(2) Impartially investigate, on his or her own initiative or on receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds, including acts related to the administration of trust funds for special needs that result from a medical malpractice or personal injury settlement; develop findings in each case; and, to the extent the findings favor the complainant with a developmental disability, follow through on behalf of the complainant to the resolution of the complaint; however, the ombuds may decline to investigate any complaint as provided by rules adopted under this chapter;

(3) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies implemented by the department to carry out its responsibilities in delivering services to individuals with developmental disabilities with a view toward ensuring health and safety;

(4) Recommend changes in the procedures for addressing the needs of individuals with developmental disabilities;

(5) By November 1st of each year, submit to the council, the appropriate committees of the legislature, and to the governor a report analyzing the work of the office, including recommendations;

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

(7) Adopt rules necessary to implement this chapter.

NEW SECTION. **Sec.**  CONFIDENTIALITY. The ombuds shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except to the extent disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that is confidential or privileged by law, the ombuds shall maintain the confidentiality of the information and shall not further disclose or disseminate the information, except as provided by applicable state or federal law. Investigative records of the office are confidential and are exempt from public disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  ADMISSIBILITY OF EVIDENCE—TESTIMONY REGARDING OFFICIAL DUTIES. Neither the ombuds nor the ombuds' staff may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the ombuds or of the ombuds' staff. All related memoranda, work product, notes, and case files of the office are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding.

NEW SECTION. **Sec.**  RELEASE OF IDENTIFYING INFORMATION. (1) Identifying information about complainants or witnesses is not subject to any method of legal compulsion, nor may such information be revealed to the governor, except under the following circumstances:

(a) The complainant or witness waives confidentiality;

(b) Under a legislative subpoena when there is a legislative investigation as to neglect of duty or misconduct by the ombuds or ombuds' office and the identifying information is necessary to the investigation of the ombuds' acts; or

(c) Under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombuds or ombuds' office and the identifying information is necessary to the investigation of the ombuds' acts.

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

NEW SECTION. **Sec.**  INAPPLICABILITY OF PRIVILEGE. The privilege described in section 5 of this act does not apply when:

(1) The ombuds or ombuds' staff member has direct knowledge of an alleged crime, and the testimony, evidence, or discovery sought is relevant to that allegation;

(2) The ombuds or a member of the ombuds' staff has received a threat of, or becomes aware of a risk of, imminent serious harm to any person, and the testimony, evidence, or discovery sought is relevant to that threat or risk; or

(3) The ombuds has been asked to provide general information regarding the general operation of, or the general processes employed at, the ombuds' office.

NEW SECTION. **Sec.**  LIABILITY FOR GOOD FAITH PERFORMANCE—PRIVILEGED COMMUNICATIONS. (1) An employee of the office is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of a contracting agency of the department, or a family member or recipient of developmental disabilities services for any communication made, or information given or disclosed, to aid the office in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged, and such privilege serves as a defense in any action in libel or slander.

NEW SECTION. **Sec.**  REPORT OF CONDUCT WARRANTING CRIMINAL OR DISCIPLINARY PROCEEDINGS. When the ombuds or ombuds' staff member has reasonable cause to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary proceedings, the ombuds or ombuds' staff member shall report the matter, or cause a report to be made, to the appropriate authorities.

NEW SECTION. **Sec.**  COMMUNICATION. The department shall:

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

(2) Permit the ombuds or the ombuds' designee physical access to state institutions serving persons with developmental disabilities, and state licensed or certified facilities or residences where individuals with developmental disabilities receive medicaid personal care services, for the purposes of carrying out the ombuds' duties under this chapter;

(3) On the ombuds' request, grant the ombuds or the ombuds' designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department that the ombuds' considers necessary in an investigation for the purposes of carrying out the ombuds' duties under this chapter.

NEW SECTION. **Sec.**  MEMORANDA OF AGREEMENT. (1) The ombuds shall collaborate and have a memoranda of agreement with the office of the state long-term care ombuds, the office of the family and children's ombuds, the Washington protection and advocacy system, the mental health ombuds, and the office of the education ombuds to clarify authority in those situations where their mandates overlap.

(2) The ombuds may recommend changes in the procedure for addressing the needs of persons with developmental disabilities and share such recommendations with the council, the appropriate legislative committees, and the Washington protection and advocacy system.

NEW SECTION. **Sec.**  PRIORITIZED POPULATION. The ombuds shall give priority for its services to clients of the department of social and health services developmental disabilities administration who are receiving, are eligible for, or have applied for services.

NEW SECTION. **Sec.**  Sections 1 through 12 of this act constitute a new chapter in Title 71A RCW.

NEW SECTION. **Sec.**  By January 1, 2017, the developmental disabilities ombuds created in this act shall report to the appropriate committees of the legislature on the requirements of section 11(1) of this act, including the content of the memoranda of agreement and how overlapping authority has been clarified.

NEW SECTION. **Sec.**  EFFECTIVE DATE. This act takes effect October 1, 2017.

NEW SECTION. **Sec.**  NULL AND VOID. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2017, in the omnibus appropriations act, this act is null and void.

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