

SENATE BILL REPORT

E2SSB 6564

As Amended by House, March 3, 2016

Title: An act relating to persons with developmental disabilities.

Brief Description: Providing protections for persons with developmental disabilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Fain, Keiser, McAuliffe, Hobbs, Conway, Angel, Frockt and Warnick).

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/26/16, 2/04/16 [DPS-WM].

Ways & Means: 2/08/16, 2/09/16 [DP2S].

Passed Senate: 2/16/16, 48-0.

Passed House: 3/03/16, 95-0.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 6564 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove and Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6564 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hasegawa, Hewitt, Nelson, O'Ban, Padden, Parlette, Pedersen, Rolfes, Schoesler and Warnick.

Staff: Mark Eliason (786-7454)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The Developmental Disabilities Administration (DDA) is a subdivision of the Department of Social and Health Services (DSHS) which provides assistance and support for persons with developmental disabilities in Washington. Programs offered by the DDA include residential provider services, residential services, and various non-residential services including case management, child development services, employment services, and Medicaid personal care.

DDA clients receive a functional assessment which is updated annually to determine whether the client qualifies for funded DDA services and determine the level of service.

Adult Protective Services (APS) is a division of DSHS which investigates allegations of abuse, abandonment, exploitation, or neglect relating to vulnerable adults. According to statutory direction, APS may conduct a fatality review when a vulnerable adult dies and the DSHS has reason to believe that the death may be related to abuse, abandonment, exploitation, or neglect and the adult is receiving home and community-based services in the adult's home or is living at home and was the subject of a report of abuse, abandonment, exploitation, or neglect within the past 12 months. APS policy is to conduct a fatality review in all such circumstances, and also when the death occurs in a licensed or certified setting.

Summary of Engrossed Second Substitute Bill: Within funds dedicated for this purpose, DDA must increase home visits for clients identified as having the highest risk of abuse and neglect. DDA must develop a process to determine which of its clients who receive an annual developmental disabilities assessment are at highest risk of abuse and neglect. Factors which DDA may consider in making this assessment are specified in the bill. DDA must visit these clients at least once every four months, including unannounced visits as needed. If an unannounced visit takes the place of a scheduled visit and is unable to be completed, the case manager must schedule a follow-up visit.

During annual assessments, DDA must meet with the client in person. If the client is receiving personal support or supported living services, the case manager must ask to view the client's living quarters and note his or her observations in the service episode record.

An Office of the Developmental Disabilities Ombuds is created. The Department of Commerce must contract with a private, independent nonprofit organization to provide developmental disabilities Ombuds services by a competitive bidding process following stakeholder consultation. The Developmental Disabilities Ombuds must have powers and duties including:

- providing information on the rights and responsibilities of persons receiving DDA services or other state services;
- investigating administrative acts relating to persons with developmental disabilities;
- monitoring procedures implemented by DSHS and DSHS facilities relating to persons with developmental disabilities, and recommending changes to procedures; and
- submitting an annual report concerning the work of the Ombuds, including recommendations.

The Developmental Disabilities Ombuds must consult with stakeholders to develop a plan for future expansion into a model of individual Ombuds services akin to the Long-Term Care Ombuds, and report its progress and recommendations by November 1, 2019. Conflict of

interest provisions, confidentiality protections, liability protection, and other policies and procedures are established relating to the Developmental Disabilities Ombuds. The Developmental Disability Ombuds must negotiate memoranda of agreement with the state Long-Term Care Ombuds, the Office of the Family and Children's Ombuds, 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.

DSHS must conduct a vulnerable adult fatality review in the event of the death of a vulnerable adult when DSHS has reason to believe that the death may be related to abuse, abandonment, exploitation, or neglect, if the vulnerable adult was receiving services in the adult's home or a licensed or certified settings, or lives in one of those settings and was the subject of a report of abuse, abandonment, exploitation, or neglect within the past 12 months.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute As Heard In Committee (Human Services, Mental Health & Housing): PRO: This bill builds on an effort started last year to bring help to adults who need more robust care and protection than they are currently being provided. There have been shocking cases of abuse which could have been discovered earlier or prevented if these protections had been in place. A system must be created to identify persons who are most at risk, and to review those cases. There should be prioritization by risk factors. We agree Ombuds oversight is needed, although we prefer having a separate Ombuds office. Thank you for addressing some of the concerns we brought forward last year. Current case management ratios are 100 to 1 in this area. Isolation is a huge risk factor for this population. The Ombuds must have appropriate training. Clients of DDA should receive the support and protection they need to lead healthy and fulfilling lives. DDA case managers are only resourced to provide one visit per year. Smaller caseloads would help to detect problems. We should be considerate of parents and their desire for privacy as well. Language should be included indicating when the fatality review will occur. Investigations of near fatalities will depend upon reporting.

OTHER: I support the direction this is going, but recommend some amendments. The use of measures like unannounced visits should be tailored to apply to clients who have risk factors raising concern. There are other ways besides unannounced visits to investigate legitimate concerns. Some clients value their privacy and would not appreciate unannounced visits. The Ombuds should have proper training and clarity about its role. Supported living providers are already regulated and inspected by the state. Supported living should not be defined as a "facility." Limited resources should be focused on the highest risk cases. Please don't make this an unfunded mandate. Social workers support unannounced visits if they are funded. There should be more scrutiny over the role of the Long-Term Care Ombuds. Significant funds and training would be required to build this capacity.

Persons Testifying on Proposed Substitute As Heard In Committee (Human Services, Mental Health & Housing): PRO: Senator O'Ban, prime sponsor; Diana Stadden, Arc of Washington; Donna Patrick, Developmental Disabilities Council; Evelyn Perez, Bill Moss, DSHS; Noah Seidel, Self Advocates in Leadership.

OTHER: David Lord, Disability Rights WA; Melissa Johnson, Community Residential Services Assn.; Matt Zuvich, WA Federation of State Employees; Loren Freeman, Freeman & Associates; Patricia Hunter, WA State Long-Term Care Ombuds.

Persons Signed In To Testify But Not Testifying on Proposed Substitute As Heard In Committee: No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: We need an ombudsman for individuals with intellectual and developmental disabilities.

OTHER: Unannounced visits are important. Please provide funding for this and do not make this requirement an unfunded mandate.

Persons Testifying on First Substitute (Ways & Means): PRO: Donna Patrick, Developmental Disabilities Council.

OTHER: Matt Zuvich, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying on First Substitute: No one.

House Amendment(s): Removes provision granting the Office of the Developmental Disability Ombuds unrestricted access to the Department of Social and Health Services' information and data systems for the purpose of carrying out its duties.