
HOUSE BILL 2858

State of Washington

64th Legislature

2016 Regular Session

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

Read first time 01/22/16. Referred to Committee on Early Learning & Human Services.

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

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

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

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

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

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

14 NEW SECTION. **Sec. 2.** CREATION OF OFFICE. (1) There is hereby
15 created an office of the developmental disabilities ombuds within the
16 department of commerce for the purpose of informing individuals with
17 disabilities of their rights and responsibilities; disseminating
18 information; impartially investigating and resolving complaints;
19 identifying system issues; monitoring and ensuring compliance with
20 administrative acts, relevant statutes, rules, and policies

1 pertaining to services for persons with developmental disabilities;
2 and ensuring that services and supports are of good quality and
3 improve a person's quality of life. The ombuds is an independent
4 position within state government and shall exercise his or her powers
5 and duties without interference from either public or private
6 agencies or organizations.

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 3.** DUTIES OF OMBUDS. The ombuds shall perform
32 the following duties:

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

37 (2) Impartially investigate, on his or her own initiative or on
38 receipt of a complaint, an administrative act alleged to be contrary
39 to law, rule, or policy, imposed without an adequate statement of

1 reason, or based on irrelevant, immaterial, or erroneous grounds,
2 including acts related to the administration of trust funds for
3 special needs that result from a medical malpractice or personal
4 injury settlement; develop findings in each case; and, to the extent
5 the findings favor the complainant with a developmental disability,
6 follow through on behalf of the complainant to the resolution of the
7 complaint; however, the ombuds may decline to investigate any
8 complaint as provided by rules adopted under this chapter;

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

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

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

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

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

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

35 NEW SECTION. **Sec. 5.** ADMISSIBILITY OF EVIDENCE—TESTIMONY
36 REGARDING OFFICIAL DUTIES. Neither the ombuds nor the ombuds' staff
37 may be compelled, in any judicial or administrative proceeding, to
38 testify or to produce evidence regarding the exercise of the official

1 duties of the ombuds or of the ombuds' staff. All related memoranda,
2 work product, notes, and case files of the office are confidential,
3 are not subject to discovery, judicial or administrative subpoena, or
4 other method of legal compulsion, and are not admissible in evidence
5 in a judicial or administrative proceeding.

6 NEW SECTION. **Sec. 6.** RELEASE OF IDENTIFYING INFORMATION. (1)
7 Identifying information about complainants or witnesses is not
8 subject to any method of legal compulsion, nor may such information
9 be revealed to the governor, except under the following
10 circumstances:

- 11 (a) The complainant or witness waives confidentiality;
12 (b) Under a legislative subpoena when there is a legislative
13 investigation as to neglect of duty or misconduct by the ombuds or
14 ombuds' office and the identifying information is necessary to the
15 investigation of the ombuds' acts; or
16 (c) Under an investigation or inquiry by the governor as to
17 neglect of duty or misconduct by the ombuds or ombuds' office and the
18 identifying information is necessary to the investigation of the
19 ombuds' acts.

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

24 NEW SECTION. **Sec. 7.** INAPPLICABILITY OF PRIVILEGE. The
25 privilege described in section 5 of this act does not apply when:

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

36 NEW SECTION. **Sec. 8.** LIABILITY FOR GOOD FAITH PERFORMANCE—
37 PRIVILEGED COMMUNICATIONS. (1) An employee of the office is not

1 liable for good faith performance of responsibilities under this
2 chapter.

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

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

16 NEW SECTION. **Sec. 9.** REPORT OF CONDUCT WARRANTING CRIMINAL OR
17 DISCIPLINARY PROCEEDINGS. When the ombuds or ombuds' staff member has
18 reasonable cause to believe that any public official, employee, or
19 other person has acted in a manner warranting criminal or
20 disciplinary proceedings, the ombuds or ombuds' staff member shall
21 report the matter, or cause a report to be made, to the appropriate
22 authorities.

23 NEW SECTION. **Sec. 10.** COMMUNICATION. The department shall:

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

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

34 (3) On the ombuds' request, grant the ombuds or the ombuds'
35 designee the right to access, inspect, and copy all relevant
36 information, records, or documents in the possession or control of
37 the department that the ombuds' considers necessary in an

1 investigation for the purposes of carrying out the ombuds' duties
2 under this chapter.

3 NEW SECTION. **Sec. 11.** MEMORANDA OF AGREEMENT. (1) The ombuds
4 shall collaborate and have a memoranda of agreement with the office
5 of the state long-term care ombuds, the office of the family and
6 children's ombuds, the Washington protection and advocacy system, the
7 mental health ombuds, and the office of the education ombuds to
8 clarify authority in those situations where their mandates overlap.

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

14 NEW SECTION. **Sec. 12.** PRIORITIZED POPULATION. The ombuds shall
15 give priority for its services to clients of the department of social
16 and health services developmental disabilities administration who are
17 receiving, are eligible for, or have applied for services.

18 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
19 constitute a new chapter in Title 71A RCW.

20 NEW SECTION. **Sec. 14.** By January 1, 2017, the developmental
21 disabilities ombuds created in this act shall report to the
22 appropriate committees of the legislature on the requirements of
23 section 11(1) of this act, including the content of the memoranda of
24 agreement and how overlapping authority has been clarified.

25 NEW SECTION. **Sec. 15.** EFFECTIVE DATE. This act takes effect
26 October 1, 2017.

27 NEW SECTION. **Sec. 16.** NULL AND VOID. If specific funding for
28 the purposes of this act, referencing this act by bill or chapter
29 number, is not provided by June 30, 2017, in the omnibus
30 appropriations act, this act is null and void.

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