

1 AN ACT Relating to persons with developmental disabilities;
2 amending RCW 43.190.010, 43.190.020, 43.190.030, and 43.190.040; and
3 adding a new section to chapter 71A.12 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 71A.12
6 RCW to read as follows:

7 (1) The legislature finds and declares that the prevalence of the
8 abuse and neglect of individuals with developmental disabilities has
9 become an issue that negatively affects the health and well-being of
10 such individuals. In order to address this issue, the state seeks to
11 improve and standardize assessment standards to be used by the
12 developmental disabilities administration and to create a near
13 fatality review system to be conducted by the office of the state
14 long-term care ombuds program.

15 (2) At every developmental disabilities administration annual
16 assessment, the case manager is required to meet with both the client
17 and the client's representative in an in-person setting whenever it
18 is practicable to do so.

19 (3) At every developmental disabilities administration annual
20 assessment in which the client is receiving personal care services or
21 supported living services, the case manager must ask permission to

1 view the client's living quarters and include the condition in his or
2 her report of the assessment whenever it is possible to do so. If the
3 case manager is unable to view the client's living quarters for any
4 reason, the case manager must note this in his or her report along
5 with the reason given for why this is not practicable at the current
6 time.

7 (4) The department is required to randomly select at least ten
8 percent of all homes that require an annual developmental
9 disabilities administration assessment in which the client is
10 receiving personal care services or supported living services to
11 receive an unannounced visit from a developmental disabilities
12 administration case manager in each calendar year. The department
13 shall set rules for such unannounced visits consistent with the
14 purpose of protecting the health and safety of developmental
15 disabilities administration clients and may use prioritization based
16 upon the presence of risk factors, as determined by the department.
17 If any home is not able to be randomly visited at the determined time
18 for any given reason, the department shall schedule a follow-up visit
19 to occur within the next thirty calendar days.

20 (5)(a) In the event of a near fatality of a person with a
21 developmental disability who is in the care of or receiving services
22 from the department or a supervising agency, who has been in the care
23 of or received services from the department or a supervising agency
24 within three years preceding the near fatality, or who was the
25 subject of an investigation by the department for possible abuse or
26 neglect, the department shall promptly notify the office of the state
27 long-term care ombuds which shall arrange for a review of the near
28 fatality. Near fatality reviews must be conducted by qualified staff
29 under contract with the ombuds.

30 (b) For the purposes of this subsection, "near fatality" means a
31 severe injury or condition caused by abuse or neglect which results
32 in a person receiving critical care for at least twenty-four hours
33 following the person's admission to a critical care unit.

34 (6) When a case manager or other employee of the department
35 responds to an allegation of the abuse or neglect of a person with a
36 developmental disability that is screened in and open for
37 investigation and there is a subsequent allegation of abuse or
38 neglect resulting in a near fatality within one year of the initial
39 allegation that is screened in and open for investigation, the
40 department must immediately conduct a review of the case manager's

1 and the case manager's supervisor's case files and actions taken
2 during the initial report of the alleged abuse or neglect. The
3 purpose of the review is to determine if there were any errors by the
4 employees under department policy, rule, or statute. If any
5 violations of policy, rule, or statute are found, the department must
6 conduct a formal employee investigation.

7 **Sec. 2.** RCW 43.190.010 and 2013 c 23 s 88 are each amended to
8 read as follows:

9 The legislature finds that in order to comply with the federal
10 older Americans act, provide protection to persons with developmental
11 disabilities, and to effectively assist residents, patients, and
12 clients of long-term care facilities in the assertion of their civil
13 and human rights, a long-term care ombuds program should be
14 instituted.

15 **Sec. 3.** RCW 43.190.020 and 2010 c 94 s 13 are each amended to
16 read as follows:

17 (1) As used in this chapter, "long-term care facility" means any
18 of the following:

19 ~~((1))~~ (a) A facility which:

20 ~~((a))~~ (i) Maintains and operates twenty-four hour skilled
21 nursing services for the care and treatment of chronically ill or
22 convalescent patients, including mental, emotional, or behavioral
23 problems, intellectual disabilities, developmental disabilities, or
24 alcoholism;

25 ~~((b))~~ (ii) Provides supportive, restorative, and preventive
26 health services in conjunction with a socially oriented program to
27 its residents, and which maintains and operates twenty-four hour
28 services including board, room, personal care, and intermittent
29 nursing care. "Long-term health care facility" includes nursing homes
30 and nursing facilities, but does not include acute care hospital or
31 other licensed facilities except for that distinct part of the
32 hospital or facility which provides nursing facility services.

33 ~~((2))~~ (b) Any family home, group care facility, or similar
34 facility determined by the secretary, for twenty-four hour nonmedical
35 care of persons in need of personal services, supervision, or
36 assistance essential for sustaining the activities of daily living or
37 for the protection of the individual.

38 ~~((3))~~ (c) Any swing bed in an acute care facility.

1 (2) The jurisdiction of the long-term care ombuds must also
2 include clients of the developmental disabilities administration's
3 programs where one or more of the following services are being
4 provided by the department:

5 (a) Personal care services;

6 (b) Supported living services; or

7 (c) Community residential services.

8 **Sec. 4.** RCW 43.190.030 and 2013 c 23 s 89 are each amended to
9 read as follows:

10 There is created the office of the state long-term care ombuds.
11 The department of commerce shall contract with a private nonprofit
12 organization to provide long-term care ombuds services as specified
13 under, and consistent with, the federal older Americans act as
14 amended, federal mandates, developmental disabilities provisions in
15 Title 71A RCW, the goals of the state, and the needs of its citizens.
16 The department of commerce shall ensure that all program and staff
17 support necessary to enable the ombuds to effectively protect the
18 interests of residents, patients, and clients of all long-term care
19 facilities is provided by the nonprofit organization that contracts
20 to provide long-term care ombuds services. The department of commerce
21 shall adopt rules to carry out this chapter and the long-term care
22 ombuds provisions of the federal older Americans act, as amended, and
23 applicable federal regulations. The long-term care ombuds program
24 shall have the following powers and duties:

25 (1) To provide services for coordinating the activities of long-
26 term care ombuds throughout the state;

27 (2) Carry out such other activities as the department of commerce
28 deems appropriate;

29 (3) Establish procedures consistent with RCW 43.190.110 for
30 appropriate access by long-term care ombuds to long-term care
31 facilities and patients' records, including procedures to protect the
32 confidentiality of the records and ensure that the identity of any
33 complainant or resident will not be disclosed without the written
34 consent of the complainant or resident, or upon court order;

35 (4) Establish a statewide uniform reporting system to collect and
36 analyze data relating to complaints and conditions in long-term care
37 facilities for the purpose of identifying and resolving significant
38 problems, with provision for submission of such data to the
39 department of social and health services and to the federal

1 department of health and human services, or its successor agency, on
2 a regular basis; and

3 (5) Establish procedures to assure that any files maintained by
4 ombuds programs shall be disclosed only at the discretion of the
5 ombuds having authority over the disposition of such files, except
6 that the identity of any complainant or resident of a long-term care
7 facility shall not be disclosed by such ombuds unless:

8 (a) Such complainant or resident, or the complainant's or
9 resident's legal representative, consents in writing to such
10 disclosure; or

11 (b) Such disclosure is required by court order.

12 **Sec. 5.** RCW 43.190.040 and 2013 c 23 s 90 are each amended to
13 read as follows:

14 (1) Any long-term care ombuds authorized by this chapter or a
15 local governmental authority shall have training or experience or
16 both in the following areas:

17 (a) Gerontology, long-term care, or other related social services
18 programs(~~(-)~~);

19 (b) Developmental disabilities;

20 (c) The legal system(~~(-)~~); and

21 ~~((e))~~ (d) Dispute or problem resolution techniques, including
22 investigation, mediation, and negotiation.

23 (2) A long-term care ombuds shall not have been employed by or
24 participated in the management of any long-term care facility within
25 the past year.

26 (3) A long-term care ombuds shall not have been employed in a
27 governmental position with direct involvement in the licensing,
28 certification, or regulation of long-term care facilities within the
29 past year.

30 (4) No long-term care ombuds or any member of his or her
31 immediate family shall have, or have had within the past year, any
32 significant ownership or investment interest in one or more long-term
33 care facilities.

34 (5) A long-term care ombuds shall not be assigned to a long-term
35 care facility in which a member of that ombuds's immediate family
36 resides.

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