

2 **E2SSB 6400** - H AMD TO APP COMM AMD (H-5046.1/00) **614 SCOPE 3-3-00**
3 By Representative Carrell

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5 On page 54, after line 29 of the amendment, insert the following:

6 "Sec. 31. RCW 74.34.020 and 1999 c 176 s 3 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Abandonment" means action or inaction by a person or entity
11 with a duty of care for a vulnerable adult that leaves the vulnerable
12 person without the means or ability to obtain necessary food, clothing,
13 shelter, or health care.

14 (2) "Abuse" means the willful action or inaction that inflicts
15 injury, unreasonable confinement, intimidation, or punishment on a
16 vulnerable adult. In instances of abuse of a vulnerable adult who is
17 unable to express or demonstrate physical harm, pain, or mental
18 anguish, the abuse is presumed to cause physical harm, pain, or mental
19 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
20 and exploitation of a vulnerable adult, which have the following
21 meanings:

22 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
23 including but not limited to unwanted or inappropriate touching, rape,
24 sodomy, sexual coercion, sexually explicit photographing, and sexual
25 harassment. Sexual abuse includes any sexual contact between a staff
26 person, who is not also a resident or client, of a facility or a staff
27 person of a program authorized under chapter 71A.12 RCW, and a
28 vulnerable adult living in that facility or receiving service from a
29 program authorized under chapter 71A.12 RCW, whether or not it is
30 consensual.

31 (b) "Physical abuse" means the willful action of inflicting bodily
32 injury or physical mistreatment. Physical abuse includes, but is not
33 limited to, striking with or without an object, slapping, pinching,
34 choking, kicking, shoving, prodding, or the use of chemical restraints
35 or physical restraints unless the restraints are consistent with

1 licensing requirements, and includes restraints that are otherwise
2 being used inappropriately.

3 (c) "Mental abuse" means any willful action or inaction of mental
4 or verbal abuse. Mental abuse includes, but is not limited to,
5 coercion, harassment, inappropriately isolating a vulnerable adult from
6 family, friends, or regular activity, and verbal assault that includes
7 ridiculing, intimidating, yelling, or swearing.

8 (d) "Exploitation" means an act of forcing, compelling, or exerting
9 undue influence over a vulnerable adult causing the vulnerable adult to
10 act in a way that is inconsistent with relevant past behavior, or
11 causing the vulnerable adult to perform services for the benefit of
12 another.

13 (3) "Consent" means express written consent granted after the
14 vulnerable adult or his or her legal representative has been fully
15 informed of the nature of the services to be offered and that the
16 receipt of services is voluntary.

17 (4) "Department" means the department of social and health
18 services.

19 (5) "Facility" means a residence licensed or required to be
20 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,
21 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
22 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
23 centers; state hospitals operated and maintained under chapter 72.23
24 RCW; or any other facility licensed by the department.

25 (6) "Financial exploitation" means the illegal or improper use of
26 the property, income, resources, or trust funds of the vulnerable adult
27 by any person for any person's profit or advantage.

28 (7) "Individual provider" means a person under contract with the
29 department to provide services in the home under chapter 74.09 or
30 74.39A RCW.

31 (8) "Mandated reporter" is an employee of the department; law
32 enforcement officer; social worker; professional school personnel;
33 individual provider; an employee of a facility; an operator of a
34 facility; an employee of a social service, welfare, mental health,
35 adult day health, adult day care, home health, home care, or hospice
36 agency; county coroner or medical examiner; Christian Science
37 practitioner; or health care provider subject to chapter 18.130 RCW.

38 (9) "Neglect" means (a) a pattern of conduct or inaction by a
39 person or entity with a duty of care to provide the goods and services

1 that maintain physical or mental health of a vulnerable adult, or that
2 avoids or prevents physical or mental harm or pain to a vulnerable
3 adult; or (b) an act or omission that demonstrates a serious disregard
4 of consequences of such a magnitude as to constitute a clear and
5 present danger to the vulnerable adult's health, welfare, or safety.

6 (10) "Permissive reporter" means any person, employee of a
7 financial institution, attorney, or volunteer in a facility or program
8 providing services for vulnerable adults.

9 (11) "Protective services" means any services provided by the
10 department to a vulnerable adult with the consent of the vulnerable
11 adult, or the legal representative of the vulnerable adult, who has
12 been abandoned, abused, financially exploited, neglected, or in a state
13 of self-neglect. These services may include, but are not limited to
14 case management, social casework, home care, placement, arranging for
15 medical evaluations, psychological evaluations, day care, or referral
16 for legal assistance.

17 (12) "Self-neglect" means the failure of a vulnerable adult, not
18 living in a facility, to provide for himself or herself the goods and
19 services necessary for the vulnerable adult's physical or mental
20 health, and the absence of which impairs or threatens the vulnerable
21 adult's well-being. This definition may include a vulnerable adult who
22 is receiving services through home health, hospice, or a home care
23 agency, or an individual provider when the neglect is not a result of
24 inaction by that agency or individual provider.

25 (13) "Vulnerable adult" includes a person:

26 (a) Sixty years of age or older who has the functional, mental, or
27 physical inability to care for himself or herself; or

28 (b) Found incapacitated under chapter 11.88 RCW; or

29 (c) Who has a developmental disability as defined under RCW
30 71A.10.020; or

31 (d) Admitted to any facility; or

32 (e) Receiving services from home health, hospice, or home care
33 agencies licensed or required to be licensed under chapter 70.127 RCW;
34 or

35 (f) Receiving services from an individual provider.

36 **Sec. 32.** RCW 74.34.067 and 1999 c 176 s 9 are each amended to read
37 as follows:

1 (1) Where appropriate, an investigation by the department may
2 include a private interview with the vulnerable adult regarding the
3 alleged abandonment, abuse, financial exploitation, neglect, or self-
4 neglect.

5 (2) In conducting the investigation, the department shall interview
6 the complainant, unless anonymous, and shall use its best efforts to
7 interview the vulnerable adult or adults harmed, and, consistent with
8 the protection of the vulnerable adult shall interview facility staff,
9 any available independent sources of relevant information, including if
10 appropriate the family members of the vulnerable adult.

11 (3) The department may conduct ongoing case planning and
12 consultation with: (a) Those persons or agencies required to report
13 under this chapter or submit a report under this chapter; (b)
14 consultants designated by the department; and (c) designated
15 representatives of Washington Indian tribes if client information
16 exchanged is pertinent to cases under investigation or the provision of
17 protective services. Information considered privileged by statute and
18 not directly related to reports required by this chapter must not be
19 divulged without a valid written waiver of the privilege.

20 (4) The department shall prepare and keep on file a report of each
21 investigation conducted by the department for a period of time in
22 accordance with policies established by the department.

23 (5) If the department determines that the vulnerable adult has
24 suffered from abuse, neglect, self-neglect, abandonment, or financial
25 exploitation, and lacks the ability or capacity to consent, and needs
26 the protection of a guardian, the department may bring a guardianship
27 action under chapter 11.88 RCW as an interested person.

28 (6) When the investigation is completed and the department
29 determines that an incident of abandonment, abuse, financial
30 exploitation, neglect, or self-neglect has occurred, the department
31 shall inform the vulnerable adult of their right to refuse protective
32 services, and ensure that, if necessary, appropriate protective
33 services are provided to the vulnerable adult, with the consent of the
34 vulnerable adult. The vulnerable adult has the right to withdraw or
35 refuse protective services.

36 (7) Where appropriate, the department (~~may~~) shall photograph a
37 vulnerable adult or their environment for the purpose of providing
38 documentary evidence of the physical condition of the vulnerable adult
39 or his or her environment. When photographing the vulnerable adult,

1 the department shall obtain permission from the vulnerable adult or his
2 or her legal representative unless immediate photographing is necessary
3 to preserve evidence. However, if the legal representative is alleged
4 to have abused, neglected, abandoned, or exploited the vulnerable
5 adult, consent from the legal representative is not necessary. No such
6 consent is necessary when photographing the physical environment.

7 (8) When the investigation is complete and the department
8 determines that the incident of abandonment, abuse, financial
9 exploitation, or neglect has occurred, the department shall inform the
10 facility in which the incident occurred, consistent with
11 confidentiality requirements concerning the vulnerable adult,
12 witnesses, and complainants.

13 **Sec. 33.** RCW 74.34.080 and 1999 c 176 s 11 are each amended to
14 read as follows:

15 If access is denied to an employee of the department seeking to
16 investigate an allegation of abandonment, abuse, financial
17 exploitation, or neglect of a vulnerable adult by an individual, the
18 department (~~may~~) shall seek an injunction to prevent interference
19 with the investigation. The court shall issue the injunction if the
20 department shows that:

21 (1) There is reasonable cause to believe that the person is a
22 vulnerable adult and is or has been abandoned, abused, financially
23 exploited, or neglected; and

24 (2) The employee of the department seeking to investigate the
25 report has been denied access.

26 **Sec. 34.** RCW 74.34.150 and 1986 c 187 s 9 are each amended to read
27 as follows:

28 The department of social and health services(~~(, in its discretion,~~
29 ~~may)~~) shall seek relief under RCW 74.34.110 through 74.34.140 on behalf
30 of and with the consent of any vulnerable adult(~~(. Neither the~~
31 ~~department of social and health services nor the state of Washington~~
32 ~~shall be liable for failure to seek relief on behalf of any persons~~
33 ~~under this section)~~) when there is reasonable cause to believe that
34 there is a serious threat of substantial harm to the vulnerable adult.

35 **Sec. 35.** RCW 74.34.210 and 1995 1st sp.s. c 18 s 86 are each
36 amended to read as follows:

1 A petition for an order for protection or an action for damages
2 under this chapter may be brought by the plaintiff, or where necessary,
3 by his or her family members and/or guardian or legal fiduciary, or as
4 otherwise provided under this chapter. The death of the plaintiff
5 shall not deprive the court of jurisdiction over a petition or claim
6 brought under this chapter. Upon petition, after the death of the
7 vulnerable person, the right to initiate or maintain the action shall
8 be transferred to the executor or administrator of the deceased, for
9 the benefit of the surviving spouse, child or children, or other heirs
10 without regard to limitations set forth in chapter 4.20 RCW.

11 NEW SECTION. **Sec. 36.** RCW 74.34.170 (Services of department
12 discretionary--Funding) and 1986 c 187 s 10 are each repealed."

EFFECT: Requires the department of social and health services (DSHS) to seek an injunction if there is interference in an investigation of allegations of abuse of a vulnerable adult.

Requires DSHS to file a petition for the protection of a vulnerable adult if there is reasonable cause to believe there is a serious threat of substantial harm to the vulnerable adult and eliminates department and state immunity for failure to seek the petition.

Adds state mental hospitals to facilities covered by the abuse of vulnerable adults statutes.

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