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HOUSE BILL 2865

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State of Washington

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By Representatives Carrell, Boldt, Tokuda, Ballasiotes, Kagi, Veloria, Wensman, Koster, Mitchell, Hankins, Mulliken, McDonald and Miloscia

Read first time 01/21/2000. Referred to Committee on Children & Family Services.

1 AN ACT Relating to vulnerable adults; amending RCW 74.34.020,  
2 74.34.067, 74.34.080, 74.34.150, and 74.34.210; creating a new section;  
3 and repealing RCW 74.34.170.

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

5 **Sec. 1.** RCW 74.34.020 and 1999 c 176 s 3 are each amended to read  
6 as follows:

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

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

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

1 and exploitation of a vulnerable adult, which have the following  
2 meanings:

3 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
4 including but not limited to unwanted or inappropriate touching, rape,  
5 sodomy, sexual coercion, sexually explicit photographing, and sexual  
6 harassment. Sexual abuse includes any sexual contact between a staff  
7 person, who is not also a resident or client, of a facility or a staff  
8 person of a program authorized under chapter 71A.12 RCW, and a  
9 vulnerable adult living in that facility or receiving service from a  
10 program authorized under chapter 71A.12 RCW, whether or not it is  
11 consensual.

12 (b) "Physical abuse" means the willful action of inflicting bodily  
13 injury or physical mistreatment. Physical abuse includes, but is not  
14 limited to, striking with or without an object, slapping, pinching,  
15 choking, kicking, shoving, prodding, or the use of chemical restraints  
16 or physical restraints unless the restraints are consistent with  
17 licensing requirements, and includes restraints that are otherwise  
18 being used inappropriately.

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

24 (d) "Exploitation" means an act of forcing, compelling, or exerting  
25 undue influence over a vulnerable adult causing the vulnerable adult to  
26 act in a way that is inconsistent with relevant past behavior, or  
27 causing the vulnerable adult to perform services for the benefit of  
28 another.

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

33 (4) "Department" means the department of social and health  
34 services.

35 (5) "Facility" means a residence licensed or required to be  
36 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,  
37 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36  
38 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation

1 centers; state hospitals operated and maintained under chapter 72.23  
2 RCW; or any other facility licensed by the department.

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

6 (7) "Individual provider" means a person under contract with the  
7 department to provide services in the home under chapter 74.09 or  
8 74.39A RCW.

9 (8) "Mandated reporter" is an employee of the department; law  
10 enforcement officer; social worker; professional school personnel;  
11 individual provider; an employee of a facility; an operator of a  
12 facility; an employee of a social service, welfare, mental health,  
13 adult day health, adult day care, home health, home care, or hospice  
14 agency; county coroner or medical examiner; Christian Science  
15 practitioner; or health care provider subject to chapter 18.130 RCW.

16 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
17 person or entity with a duty of care to provide the goods and services  
18 that maintain physical or mental health of a vulnerable adult, or that  
19 avoids or prevents physical or mental harm or pain to a vulnerable  
20 adult; or (b) an act or omission that demonstrates a serious disregard  
21 of consequences of such a magnitude as to constitute a clear and  
22 present danger to the vulnerable adult's health, welfare, or safety.

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

26 (11) "Protective services" means any services provided by the  
27 department to a vulnerable adult with the consent of the vulnerable  
28 adult, or the legal representative of the vulnerable adult, who has  
29 been abandoned, abused, financially exploited, neglected, or in a state  
30 of self-neglect. These services may include, but are not limited to  
31 case management, social casework, home care, placement, arranging for  
32 medical evaluations, psychological evaluations, day care, or referral  
33 for legal assistance.

34 (12) "Self-neglect" means the failure of a vulnerable adult, not  
35 living in a facility, to provide for himself or herself the goods and  
36 services necessary for the vulnerable adult's physical or mental  
37 health, and the absence of which impairs or threatens the vulnerable  
38 adult's well-being. This definition may include a vulnerable adult who  
39 is receiving services through home health, hospice, or a home care

1 agency, or an individual provider when the neglect is not a result of  
2 inaction by that agency or individual provider.

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

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

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

7 (c) Who has a developmental disability as defined under RCW  
8 71A.10.020; or

9 (d) Admitted to any facility; or

10 (e) Receiving services from home health, hospice, or home care  
11 agencies licensed or required to be licensed under chapter 70.127 RCW;  
12 or

13 (f) Receiving services from an individual provider.

14 **Sec. 2.** RCW 74.34.067 and 1999 c 176 s 9 are each amended to read  
15 as follows:

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

20 (2) In conducting the investigation, the department shall interview  
21 the complainant, unless anonymous, and shall use its best efforts to  
22 interview the vulnerable adult or adults harmed, and, consistent with  
23 the protection of the vulnerable adult shall interview facility staff,  
24 any available independent sources of relevant information, including if  
25 appropriate the family members of the vulnerable adult.

26 (3) The department may conduct ongoing case planning and  
27 consultation with: (a) Those persons or agencies required to report  
28 under this chapter or submit a report under this chapter; (b)  
29 consultants designated by the department; and (c) designated  
30 representatives of Washington Indian tribes if client information  
31 exchanged is pertinent to cases under investigation or the provision of  
32 protective services. Information considered privileged by statute and  
33 not directly related to reports required by this chapter must not be  
34 divulged without a valid written waiver of the privilege.

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

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

6 (6) When the investigation is completed and the department  
7 determines that an incident of abandonment, abuse, financial  
8 exploitation, neglect, or self-neglect has occurred, the department  
9 shall inform the vulnerable adult of their right to refuse protective  
10 services, and ensure that, if necessary, appropriate protective  
11 services are provided to the vulnerable adult, with the consent of the  
12 vulnerable adult. The vulnerable adult has the right to withdraw or  
13 refuse protective services.

14 (7) Where appropriate, the department (~~may~~) shall photograph a  
15 vulnerable adult or their environment for the purpose of providing  
16 documentary evidence of the physical condition of the vulnerable adult  
17 or his or her environment. When photographing the vulnerable adult,  
18 the department shall obtain permission from the vulnerable adult or his  
19 or her legal representative unless immediate photographing is necessary  
20 to preserve evidence. However, if the legal representative is alleged  
21 to have abused, neglected, abandoned, or exploited the vulnerable  
22 adult, consent from the legal representative is not necessary. No such  
23 consent is necessary when photographing the physical environment.

24 (8) When the investigation is complete and the department  
25 determines that the incident of abandonment, abuse, financial  
26 exploitation, or neglect has occurred, the department shall inform the  
27 facility in which the incident occurred, consistent with  
28 confidentiality requirements concerning the vulnerable adult,  
29 witnesses, and complainants.

30 **Sec. 3.** RCW 74.34.080 and 1999 c 176 s 11 are each amended to read  
31 as follows:

32 If access is denied to an employee of the department seeking to  
33 investigate an allegation of abandonment, abuse, financial  
34 exploitation, or neglect of a vulnerable adult by an individual, the  
35 department (~~may~~) shall seek an injunction to prevent interference  
36 with the investigation. The court shall issue the injunction if the  
37 department shows that:

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

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

6 **Sec. 4.** RCW 74.34.150 and 1986 c 187 s 9 are each amended to read  
7 as follows:

8 The department of social and health services(~~(, in its discretion,~~  
9 ~~may)) shall seek relief under RCW 74.34.110 through 74.34.140 on behalf  
10 of and with the consent of any vulnerable adult when there is  
11 reasonable cause to believe that there is a serious threat of  
12 substantial harm to the vulnerable adult. (~~Neither the department of~~  
13 ~~social and health services nor the state of Washington shall be liable~~  
14 ~~for failure to seek relief on behalf of any persons under this~~  
15 ~~section.))~~~~

16 **Sec. 5.** RCW 74.34.210 and 1995 1st sp.s. c 18 s 86 are each  
17 amended to read as follows:

18 A petition for an order for protection or an action for damages  
19 under this chapter may be brought by the plaintiff, or where necessary,  
20 by his or her family members and/or guardian or legal fiduciary, or as  
21 otherwise provided under this chapter. The death of the plaintiff  
22 shall not deprive the court of jurisdiction over a petition or claim  
23 brought under this chapter. Upon petition, after the death of the  
24 vulnerable person, the right to initiate or maintain the action shall  
25 be transferred to the executor or administrator of the deceased, for  
26 the benefit of the surviving spouse, child or children, or other heirs  
27 without regard to limitations set forth in chapter 4.20 RCW.

28 NEW SECTION. **Sec. 6.** Section 5 of this act is retroactive to 1995  
29 in its application.

30 NEW SECTION. **Sec. 7.** RCW 74.34.170 (Services of department  
31 discretionary--Funding) and 1986 c 187 s 10 are each repealed.

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