
SENATE BILL 5042

State of Washington

62nd Legislature

2011 Regular Session

By Senators Keiser, Pflug, Chase, Kohl-Welles, Conway, Roach, Shin, and McAuliffe; by request of Department of Social and Health Services

Read first time 01/11/11. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to protection of vulnerable adults; amending RCW
2 74.34.020, 74.34.063, and 74.34.067; and repealing RCW 74.34.021.

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

4 **Sec. 1.** RCW 74.34.020 and 2010 c 133 s 2 are each amended to read
5 as follows:

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

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

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

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

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

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

22 (d) "Exploitation" means an act of: (i) Causing a vulnerable adult
23 to perform services for the benefit of another; (ii) forcing,
24 compelling, or exerting undue influence over a vulnerable adult causing
25 the vulnerable adult to act in a way that is inconsistent with relevant
26 past behavior(, or causing the vulnerable adult to perform services
27 for the benefit of another)); or (iii) manipulating or grooming a
28 vulnerable adult into making a gift or loan, or executing or changing
29 a will, power of attorney, or other document that creates an agency
30 relationship.

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

35 (4) "Department" means the department of social and health
36 services.

37 (5) "Facility" means a residence licensed or required to be
38 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,

1 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
2 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
3 centers; or any other facility licensed by the department.

4 (6)(a) "Financial exploitation" means the illegal, wrongful, or
5 improper use, control, transfer, withholding, or possession of the
6 property((, income, resources, or trust funds)) of ((the)) a vulnerable
7 adult by ((any)) a person ((for any person's profit or advantage other
8 than for the vulnerable adult's profit or advantage)) or entity.
9 "Financial exploitation" may include:

10 (i) Accepting payment to provide goods or services to a vulnerable
11 adult and failing to provide such goods or services;

12 (ii) The use of, or benefit from, the property or the income of a
13 vulnerable adult for a purpose that does not benefit a vulnerable
14 adult, by a person acting as a representative of the vulnerable adult
15 or by any person with a fiduciary duty to the vulnerable adult for a
16 purpose that does not benefit the vulnerable adult;

17 (iii) Solicitation or attempted solicitation of a vulnerable adult
18 for gifts, loans, or the use of the vulnerable adult's property or
19 income by any person or entity involved in the provision of long-term
20 care or personal care services to vulnerable adults; or

21 (iv) The acceptance of a gift or loan from a facility resident by
22 a facility provider, any employee of the facility, or any person
23 contracted with the facility.

24 (b) For the purposes of this subsection, "property" includes any:

25 (i) Interest in real or personal property;

26 (ii) Income;

27 (iii) Other resources;

28 (iv) Credit;

29 (v) Identity;

30 (vi) Property or other resources that are held for the benefit of
31 a vulnerable adult by a fiduciary or representative of the vulnerable
32 adult, including property located in trust accounts, conservatorships,
33 guardianships, or other accounts.

34 (7) "Financial institution" has the same meaning as in RCW
35 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
36 institution" also means a "broker-dealer" or "investment adviser" as
37 defined in RCW 21.20.005.

1 (8) "Incapacitated person" means a person who is at a significant
2 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),
3 (c), or (d).

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

7 (10) "Interested person" means a person who demonstrates to the
8 court's satisfaction that the person is interested in the welfare of
9 the vulnerable adult, that the person has a good faith belief that the
10 court's intervention is necessary, and that the vulnerable adult is
11 unable, due to incapacity, undue influence, or duress at the time the
12 petition is filed, to protect his or her own interests.

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

20 (12) "Neglect" means (a) a pattern of conduct or inaction by a
21 person or entity with a duty of care that fails to provide the goods
22 and services that maintain physical or mental health of a vulnerable
23 adult, or that fails to avoid or prevent physical or mental harm or
24 pain to a vulnerable adult; or (b) an act or omission that demonstrates
25 a serious disregard of consequences of such a magnitude as to
26 constitute a clear and present danger to the vulnerable adult's health,
27 welfare, or safety, including but not limited to conduct prohibited
28 under RCW 9A.42.100.

29 (13) "Permissive reporter" means any person, including, but not
30 limited to, an employee of a financial institution, attorney, or
31 volunteer in a facility or program providing services for vulnerable
32 adults.

33 (14) "Protective services" means any services provided by the
34 department to a vulnerable adult with the consent of the vulnerable
35 adult, or the legal representative of the vulnerable adult, who has
36 been abandoned, abused, financially exploited, neglected, or in a state
37 of self-neglect. These services may include, but are not limited to

1 case management, social casework, home care, placement, arranging for
2 medical evaluations, psychological evaluations, day care, or referral
3 for legal assistance.

4 (15) "Self-neglect" means the failure of a vulnerable adult, not
5 living in a facility, to provide for himself or herself the goods and
6 services necessary for the vulnerable adult's physical or mental
7 health, and the absence of which impairs or threatens the vulnerable
8 adult's well-being. This definition may include a vulnerable adult who
9 is receiving services through home health, hospice, or a home care
10 agency, or an individual provider when the neglect is not a result of
11 inaction by that agency or individual provider.

12 (16) "Vulnerable adult" includes a person:

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

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

16 (c) Who has a developmental disability as defined under RCW
17 71A.10.020; or

18 (d) Admitted to any facility; or

19 (e) Receiving services from home health, hospice, or home care
20 agencies licensed or required to be licensed under chapter 70.127 RCW;
21 or

22 (f) Receiving services from an individual provider; or

23 (g) Who self-directs his or her own care and receives services from
24 a personal aide under chapter 74.39 RCW.

25 **Sec. 2.** RCW 74.34.063 and 2005 c 274 s 354 are each amended to
26 read as follows:

27 (1) The department shall initiate a response to a report of
28 suspected abandonment, abuse, financial exploitation, neglect, or self-
29 neglect of a vulnerable adult, no later than twenty-four hours after
30 knowledge of the report(~~(, of suspected abandonment, abuse, financial~~
31 ~~exploitation, neglect, or self-neglect of a vulnerable adult)~~)).

32 (2) When the initial report or investigation by the department
33 indicates that the alleged abandonment, abuse, financial exploitation,
34 or neglect may be criminal, the department shall make an immediate
35 report to the appropriate law enforcement agency. The department and
36 law enforcement will coordinate in investigating reports made under

1 this chapter. The department may provide protective services and other
2 remedies as specified in this chapter.

3 (3) The law enforcement agency or the department shall report the
4 incident in writing to the proper county prosecutor or city attorney
5 for appropriate action whenever the investigation reveals that a crime
6 may have been committed.

7 (4) The department and law enforcement may share information
8 contained in reports and findings of abandonment, abuse, financial
9 exploitation, and neglect of vulnerable adults, consistent with RCW
10 74.04.060, chapter 42.56 RCW, and other applicable confidentiality
11 laws.

12 (5) The department shall notify the proper licensing authority
13 concerning any report received under this chapter that alleges that a
14 person who is professionally licensed, certified, or registered under
15 Title 18 RCW has abandoned, abused, financially exploited, or neglected
16 a vulnerable adult.

17 (6) The department may share reports of abandonment, abuse,
18 neglect, or financial exploitation of a vulnerable adult, investigative
19 information, and final investigation reports or findings with
20 appropriate state or local agencies, law enforcement agencies, the
21 office of the attorney general, federally recognized tribes, or other
22 entities or businesses that provide services or support to vulnerable
23 adults or that license persons who provide the services when the
24 sharing would promote (a) the protection of vulnerable adults; (b) the
25 provision of services to vulnerable adults; or (c) criminal or civil
26 investigations of, or actions against, individuals alleged to have
27 abused, abandoned, neglected, or financially exploited vulnerable
28 adults.

29 **Sec. 3.** RCW 74.34.067 and 2007 c 312 s 2 are each amended to read
30 as follows:

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

35 (2) In conducting the investigation, the department shall interview
36 the complainant, unless anonymous, and shall use its best efforts to
37 interview the vulnerable adult or adults harmed, and, consistent with

1 the protection of the vulnerable adult shall interview facility staff,
2 any available independent sources of relevant information, including if
3 appropriate the family members of the vulnerable adult.

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

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

16 (5) If the department has reason to believe that the vulnerable
17 adult has suffered from abuse, neglect, self-neglect, abandonment, or
18 financial exploitation, and lacks the ability or capacity to consent,
19 and needs the protection of a guardian, the department may bring a
20 guardianship action under chapter 11.88 RCW.

21 (6) When the investigation is completed and the department
22 determines that an incident of abandonment, abuse, financial
23 exploitation, neglect, or self-neglect has occurred, the department
24 shall inform the vulnerable adult of their right to refuse protective
25 services, and ensure that, if necessary, appropriate protective
26 services are provided to the vulnerable adult, with the consent of the
27 vulnerable adult. The vulnerable adult has the right to withdraw or
28 refuse protective services.

29 (7) The department's adult protective services division may enter
30 into agreements with federally recognized tribes to investigate reports
31 of abandonment, abuse, neglect, financial exploitation, or self-neglect
32 of vulnerable adults on property over which a federally recognized
33 tribe has exclusive jurisdiction. If the department has information
34 that abandonment, abuse, financial exploitation, or neglect is criminal
35 or is placing a vulnerable adult on tribal property at potential risk
36 of personal or financial harm, the department may notify tribal law
37 enforcement or another tribal representative specified by the tribe.
38 Upon receipt of the notification, the tribe may assume jurisdiction of

1 the matter. Neither the department nor its employees may participate
2 in the investigation after the tribe assumes jurisdiction. The
3 department, its officers, and its employees may not be independently or
4 jointly and severally liable for any action or inaction of the tribe or
5 for any harm to the alleged victim, the person against whom the
6 allegations were made, or other parties that occurs after the tribe
7 assumes jurisdiction. Nothing in this section limits the department's
8 jurisdiction and authority over facilities or entities that the
9 department licenses or certifies under federal or state law.

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

20 ((+8)) (9) When the investigation is complete and the department
21 determines that the incident of abandonment, abuse, financial
22 exploitation, or neglect has occurred, the department shall inform the
23 facility in which the incident occurred, consistent with
24 confidentiality requirements concerning the vulnerable adult,
25 witnesses, and complainants.

26 NEW SECTION. Sec. 4. RCW 74.34.021 (Vulnerable adult--Definition)
27 and 1999 c 336 s 6 are each repealed.

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