

SB 5510 - H AMD 479

By Representative Pedersen

ADOPTED 04/25/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 74.34.020 and 2012 c 10 s 62 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

28 (b) "Physical abuse" means the willful action of inflicting bodily
29 injury or physical mistreatment. Physical abuse includes, but is not
30 limited to, striking with or without an object, slapping, pinching,

1 choking, kicking, shoving, prodding, or the use of chemical restraints
2 or physical restraints unless the restraints are consistent with
3 licensing requirements, and includes restraints that are otherwise
4 being used inappropriately.

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

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

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

19 (4) "Department" means the department of social and health
20 services.

21 (5) "Facility" means a residence licensed or required to be
22 licensed under chapter 18.20 RCW, assisted living facilities; chapter
23 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
24 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential
25 habilitation centers; or any other facility licensed or certified by
26 the department.

27 (6) "Financial exploitation" means the illegal or improper use,
28 control over, or withholding of the property, income, resources, or
29 trust funds of the vulnerable adult by any person or entity for any
30 person's or entity's profit or advantage other than for the vulnerable
31 adult's profit or advantage. "Financial exploitation" includes, but is
32 not limited to:

33 (a) The use of deception, intimidation, or undue influence by a
34 person or entity in a position of trust and confidence with a
35 vulnerable adult to obtain or use the property, income, resources, or
36 trust funds of the vulnerable adult for the benefit of a person or
37 entity other than the vulnerable adult;

1 (b) The breach of a fiduciary duty, including, but not limited to,
2 the misuse of a power of attorney, trust, or a guardianship
3 appointment, that results in the unauthorized appropriation, sale, or
4 transfer of the property, income, resources, or trust funds of the
5 vulnerable adult for the benefit of a person or entity other than the
6 vulnerable adult; or

7 (c) Obtaining or using a vulnerable adult's property, income,
8 resources, or trust funds without lawful authority, by a person or
9 entity who knows or clearly should know that the vulnerable adult lacks
10 the capacity to consent to the release or use of his or her property,
11 income, resources, or trust funds.

12 (7) "Financial institution" has the same meaning as in RCW
13 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
14 institution" also means a "broker-dealer" or "investment adviser" as
15 defined in RCW 21.20.005.

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

19 (9) "Individual provider" means a person under contract with the
20 department to provide services in the home under chapter 74.09 or
21 74.39A RCW.

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

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

35 (12) "Neglect" means (a) a pattern of conduct or inaction by a
36 person or entity with a duty of care that fails to provide the goods
37 and services that maintain physical or mental health of a vulnerable
38 adult, or that fails to avoid or prevent physical or mental harm or

1 pain to a vulnerable adult; or (b) an act or omission by a person or
2 entity with a duty of care that demonstrates a serious disregard of
3 consequences of such a magnitude as to constitute a clear and present
4 danger to the vulnerable adult's health, welfare, or safety, including
5 but not limited to conduct prohibited under RCW 9A.42.100.

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

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

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

26 (16) "Social worker" means:

27 (a) A social worker as defined in RCW 18.320.010(2); or

28 (b) Anyone engaged in a professional capacity during the regular
29 course of employment in encouraging or promoting the health, welfare,
30 support, or education of vulnerable adults, or providing social
31 services to vulnerable adults, whether in an individual capacity or as
32 an employee or agent of any public or private organization or
33 institution.

34 (17) "Vulnerable adult" includes a person:

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

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

- 1 (c) Who has a developmental disability as defined under RCW
2 71A.10.020; or
3 (d) Admitted to any facility; or
4 (e) Receiving services from home health, hospice, or home care
5 agencies licensed or required to be licensed under chapter 70.127 RCW;
6 or
7 (f) Receiving services from an individual provider; or
8 (g) Who self-directs his or her own care and receives services from
9 a personal aide under chapter 74.39 RCW.

10 **Sec. 2.** RCW 74.34.035 and 2010 c 133 s 4 are each amended to read
11 as follows:

12 (1) When there is reasonable cause to believe that abandonment,
13 abuse, financial exploitation, or neglect of a vulnerable adult has
14 occurred, mandated reporters shall immediately report to the
15 department.

16 (2) When there is reason to suspect that sexual assault has
17 occurred, mandated reporters shall immediately report to the
18 appropriate law enforcement agency and to the department.

19 (3) When there is reason to suspect that physical assault has
20 occurred or there is reasonable cause to believe that an act has caused
21 fear of imminent harm:

22 (a) Mandated reporters shall immediately report to the department;
23 and

24 (b) Mandated reporters shall immediately report to the appropriate
25 law enforcement agency, except as provided in subsection (4) of this
26 section.

27 (4) A mandated reporter is not required to report to a law
28 enforcement agency, unless requested by the injured vulnerable adult or
29 his or her legal representative or family member, an incident of
30 physical assault between vulnerable adults that causes minor bodily
31 injury and does not require more than basic first aid, unless:

32 (a) The injury appears on the back, face, head, neck, chest,
33 breasts, groin, inner thigh, buttock, genital, or anal area;

34 (b) There is a fracture;

35 (c) There is a pattern of physical assault between the same
36 vulnerable adults or involving the same vulnerable adults; or

37 (d) There is an attempt to choke a vulnerable adult.

1 (5) When there is reason to suspect that the death of a vulnerable
2 adult was caused by abuse, neglect, or abandonment by another person,
3 mandated reporters shall, pursuant to RCW 68.50.020, report the death
4 to the medical examiner or coroner having jurisdiction, as well as the
5 department and local law enforcement, in the most expeditious manner
6 possible. A mandated reporter is not relieved from the reporting
7 requirement provisions of this subsection by the existence of a
8 previously signed death certificate. If abuse, neglect, or abandonment
9 caused or contributed to the death of a vulnerable adult, the death is
10 a death caused by unnatural or unlawful means, and the body shall be
11 the jurisdiction of the coroner or medical examiner pursuant to RCW
12 68.50.010.

13 (6) Permissive reporters may report to the department or a law
14 enforcement agency when there is reasonable cause to believe that a
15 vulnerable adult is being or has been abandoned, abused, financially
16 exploited, or neglected.

17 (7) No facility, as defined by this chapter, agency licensed or
18 required to be licensed under chapter 70.127 RCW, or facility or agency
19 under contract with the department to provide care for vulnerable
20 adults may develop policies or procedures that interfere with the
21 reporting requirements of this chapter.

22 (8) Each report, oral or written, must contain as much as possible
23 of the following information:

24 (a) The name and address of the person making the report;

25 (b) The name and address of the vulnerable adult and the name of
26 the facility or agency providing care for the vulnerable adult;

27 (c) The name and address of the legal guardian or alternate
28 decision maker;

29 (d) The nature and extent of the abandonment, abuse, financial
30 exploitation, neglect, or self-neglect;

31 (e) Any history of previous abandonment, abuse, financial
32 exploitation, neglect, or self-neglect;

33 (f) The identity of the alleged perpetrator, if known; and

34 (g) Other information that may be helpful in establishing the
35 extent of abandonment, abuse, financial exploitation, neglect, or the
36 cause of death of the deceased vulnerable adult.

37 (9) Unless there is a judicial proceeding or the person consents,

1 the identity of the person making the report under this section is
2 confidential.

3 (10) In conducting an investigation of abandonment, abuse,
4 financial exploitation, self-neglect, or neglect, the department or law
5 enforcement, upon request, must have access to all relevant records
6 related to the vulnerable adult that are in the possession of mandated
7 reporters and their employees, unless otherwise prohibited by law.
8 Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200,
9 70.230.080, and 74.42.640 shall not be subject to the requirements of
10 this subsection. Providing access to records relevant to an
11 investigation by the department or law enforcement under this provision
12 may not be deemed a violation of any confidential communication
13 privilege. Access to any records that would violate attorney-client
14 privilege shall not be provided without a court order unless otherwise
15 required by court rule or caselaw.

16 **Sec. 3.** RCW 74.34.067 and 2011 c 170 s 2 are each amended to read
17 as follows:

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

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

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

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

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

9 (6) For purposes consistent with this chapter, the department, the
10 certified professional guardian board, and the office of public
11 guardianship may share information contained in reports and
12 investigations of the abuse, abandonment, neglect, self-neglect, and
13 financial exploitation of vulnerable adults. This information may be
14 used solely for (a) recruiting or appointing appropriate guardians and
15 (b) monitoring, or when appropriate, disciplining certified
16 professional or public guardians. Reports of abuse, abandonment,
17 neglect, self-neglect, and financial exploitation are confidential
18 under RCW 74.34.095 and other laws, and secondary disclosure of
19 information shared under this section is prohibited.

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

28 ((+7)) (8) The department's adult protective services division may
29 enter into agreements with federally recognized tribes to investigate
30 reports of abandonment, abuse, financial exploitation, neglect, or
31 self-neglect of vulnerable adults on property over which a federally
32 recognized tribe has exclusive jurisdiction. If the department has
33 information that abandonment, abuse, financial exploitation, or neglect
34 is criminal or is placing a vulnerable adult on tribal property at
35 potential risk of personal or financial harm, the department may notify
36 tribal law enforcement or another tribal representative specified by
37 the tribe. Upon receipt of the notification, the tribe may assume
38 jurisdiction of the matter. Neither the department nor its employees

1 may participate in the investigation after the tribe assumes
2 jurisdiction. The department, its officers, and its employees are not
3 liable for any action or inaction of the tribe or for any harm to the
4 alleged victim, the person against whom the allegations were made, or
5 other parties that occurs after the tribe assumes jurisdiction.
6 Nothing in this section limits the department's jurisdiction and
7 authority over facilities or entities that the department licenses or
8 certifies under federal or state law.

9 ((+8)) (9) The department may photograph a vulnerable adult or
10 their environment for the purpose of providing documentary evidence of
11 the physical condition of the vulnerable adult or his or her
12 environment. When photographing the vulnerable adult, the department
13 shall obtain permission from the vulnerable adult or his or her legal
14 representative unless immediate photographing is necessary to preserve
15 evidence. However, if the legal representative is alleged to have
16 abused, neglected, abandoned, or exploited the vulnerable adult,
17 consent from the legal representative is not necessary. No such
18 consent is necessary when photographing the physical environment.

19 ((+9)) (10) When the investigation is complete and the department
20 determines that the incident of abandonment, abuse, financial
21 exploitation, or neglect has occurred, the department shall inform the
22 facility in which the incident occurred, consistent with
23 confidentiality requirements concerning the vulnerable adult,
24 witnesses, and complainants."

25 Correct the title.

EFFECT: Identifies two exceptions to the requirement that, during
an investigation, mandated reporters must provide law enforcement and
the Department of Social and Health Services access to all relevant
records in their possession related to the vulnerable adult: (1)
Records maintained by professional review boards, quality assurance
committees, and quality improvement programs are not subject to the
requirement; and (2) access to records will not be provided if that
access would violate attorney-client privilege, unless required by a
court order or otherwise required by law.

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